KAY DEL SULP 1788

Mr BRODIE

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AN

ACCOUNT OF THE TRIAL

OF

WILLIAM BRODIE, AND GEORGE SMITH,

Before the High Court of Justiciary,

ON WEDNESDAY THE 27th, AND THURSDAY THE 28th DAYS OF AUGUST, 1788;

FOR BREAKING INTO, AND ROBBING,

THE

GENERAL EXCISE OFFICE OF SCOTLAND,

ON THE 5th DAY OF MARCH LAST.

ILLUSTRATED WITH NOTES AND ANECDOTES.

TO WHICH IS ADDED,

AN APPENDIX,

CONTAINING SEVERAL CURIOUS PAPERS RELATIVE TO THE TRIAL.

BY A JURYMAN.

"READ THIS AND TREMBLE! YE WHO 'SCAPE THE LAWS." POPE.

EDINBURGH:
PRINTED FOR WILLIAM CREECH.

M,DCC,LXXXVIII.

MVSEVM
BRITAN
NICVM

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INTRODUCTION.

IT will readily be allowed, that few Trials more remarkable than the following have ever happened, if we conſider the character and ſituation of the principal perſon tried,—the nature of the crime,—and the ingenuity and novelty of the means by which it was perpetrated.

A citizen, not only in a comfortable, but in a wealthy ſituation, and who had frequently held reſpectable public ſtations in this metropolis, brought to trial for a crime of ſo dangerous and atrocious a nature, which only the loweſt and moſt abject could have been ſuppoſed to commit, is not to be found in the criminal hiſtory of this country.—The crime of the daring highwayman is venial, when compared with that of the inſidious plunderer, under ſanction of character.

The crime of robbery, no doubt, is but too frequent;—but it is generally committed either by violence and force, where perſonal danger is incurred,—or it is diſcernable by evident traces of fraudulent deſign and cunning.

It has, however, been reſerved for the preſent day, to contrive a method of robbery that ſhould evade all ſuſpicion, and even baffle every poſſibility of detection, unleſs by the information of an accomplice.

complice.—An individual unconnected, and poſſeſſed of the art, might have remained in ſecurity, without the ſmalleſt ſuſpicion of guilt, for a long period, if no croſs accident had happened.

That peoples property ſhould be abſtracted, as if by enchantment, and that, too, effected by a wealthy perſon, living in the boſom of ſociety, enjoying credit and reſpect, it is believed the Annals of Newgate, that rich record of depravity, cannot afford an example.

This Trial, and the circumſtances connected with it, open a ſcene of the deepeſt guilt and turpitude; and of the moſt aſtoniſhing nature that, perhaps, was ever exhibited to mankind. It fortunately has been the means of breaking the moſt dangerous combination of men that ever leagued together againſt ſociety. This truth ſtruck the Lord Juſtice Clerk ſo forcibly on the trial, that, when he came to diſcharge the Jury from their duty, he ſaid, "Their COUNTRY "would thank them for the verdict they had that day returned."

Will it be believed, that one of the unfortunate perſons, an account of whoſe Trial is contained in the following ſheets, not many months ago, while the ſecret depredations were going on that ſo much alarmed this country, and while freſh amazement appeared daily in every countenance, ſat as a Juryman to judge of the crimes of others, in that very Court where he himſelf received ſentence of DEATH *!

Video meliora, proboque, deteriora ſequor.

What

* On the 4th and 5th of February laſt, Mr Brodie ſerved as a Juryman, in the Court of Juſticiary, on the Trial of Allan M'Farlane officer of Exciſe, and Richard Firmin ſoldier in the 39th regiment of foot.

What a ſerious and awful leſſon does this Trial afford to the bulk of mankind, of humility and circumſpection in conduct! The neglect of early education, inattention to the acquirement of good principles and habits, and the aſſociating with bad companions, often lead to fatal conſequences, even with many whoſe ſituation and opportunities, if rightly improved, might have led to reſpectability, to honour, and to opulence.

The firſt ſtep to vice prepares the mind for further acceſſions of guilt. The reſtraints of conſcience once overcome, give leſs reſiſtance in every future breach of moral duty; and crime often ſucceeds crime, till the ſword of juſtice falls on the guilty head.

As the evidence in Trials before the High Court of Juſticiary is not now taken down in writing, to prevent the oppreſſive length which our forms render unavoidable, a faithful account of every circumſtance in this ſingular and intereſting Trial is endeavoured to be given, from very ample notes taken during the whole proceedings. The full forms are given, for the information of thoſe who may not be acquainted with the procedure of the Criminal Court.

It has not been ſo much an object with the writer of the account of this Trial to dwell, at great length, on the conteſts of the learned Counſel on points of law, (although he hopes he has given theſe ſufficiently full), as to give the train of facts, and the evidence, with perſpicuity, and with that candour which becomes a Juryman intent on the import of the evidence on his own mind.

The Trial commenced preciſely at Nine o'clock in the morning of Wedneſday the 27th of Auguſt, and the Jury were not incloſed till near Six in the morning of the day following. The fatigue of the Trial, and the ſhort time that has been taken to draw up this

account, in order to ſatisfy, as early as poſſible, the impatient curioſity of the Public, will be a ſufficient apology for any trivial inaccuracies.

Some apology is due to the Public for not giving ſome of the declarations by *Smith* at full length.—By the Public the parts omitted would have no doubt been deemed curious, and would have been read with avidity ; and indeed where atrocity is flagrant, it ought to be expoſed. But from motives of delicacy to many worthy and reſpectable connections of one of the unfortunate criminals, already ſufficiently loaded with guilt, they have been ſuppreſſed.

The paragraphs omitted were not read in Court, nor were they led in evidence before the Jury, from the indulgence of the Lord Advocate to the priſoner and his friends.

The paper, entitled in the Indictment, " State of my Affairs," &c. although laid on the table for the inſpection of the Jury, yet, being of a private nature, and not neceſſarily connected with the crime charged, the Jury had too much delicacy to look into ; and it is hoped the ſame motive will be a ſufficient apology for not laying it before the Public.

Where reſpectable names are mentioned in the declarations or letters, it is not to be doubted that every liberal mind will approve of their being left blank, although it is ſurely no diſgrace to the beſt of men, that ſome in their line of relationſhip ſhould have wandered wide from the paths of rectitude and virtue.—Eſteem is founded on perſonal qualities alone—and virtue is not hereditary.

In the courſe of the account of this Trial, notes are added in ſome places at the bottom of the pages, to elucidate and connect the evidence. Some hiſtorical circumſtances and anecdotes are alſo given, illuſtrative of character, or which were deemed ſingularly curious.—An Appendix is alſo given, containing much curious information connected with the Trial.

The account of this Trial has extended to a much greater length than was at firſt imagined. The writer can only ſay, that *he had not time to make it ſhorter.* He was puſhed to do it *currente calamo.*

To digeſt ſuch a length of evidence into regular form, and to write, to correct, and to publiſh it in ſo ſhort a time, will be allowed to be no ſmall labour, eſpecially to a perſon not of the profeſſion of writing on ſubjects of this kind, and who had much other buſineſs to attend to.—But exertions may be made, and—*Volenti nil difficile.*

TRIAL

E R R A T A.

Page 27. the laſt word of the page, for *manner* read *indiſtment.*

88. line 9. for *ſhe* devil read only *devil.*

68. The explanation of *glimed the ſcrive,* given at the bottom of that page, is a miſinformation, it means *burned the letter.*

TRIAL

OF

WILLIAM BRODIE,

AND

GEORGE SMITH, &c.

THE Priſoners, WILLIAM BRODIE, and GEORGE SMITH, were brought from the Priſon into Court before Nine o'clock in the morning of Auguſt 27. 1788. They were conveyed, upon their requeſt, in chairs, but each having a centinel of the City Guard, on the right and left, with naked bayonets, and a ſergeant's guard behind with muſkets and fixed bayonets. A party of the 7th regiment lined the way to the Court, to keep off the croud. Mr Brodie was clean, and well dreſſed in a new dark blue coat, and a faſhionable waiſtcoat, black ſattin breeches, and white ſilk ſtockings, and his hair full dreſſed. Smith was meanly dreſſed. The demeanour of the firſt was eaſy and confident;—that of the latter timid and dejected.

The Judges, in their juſticiary robes, preceded by a Macer bearing the juſticiary mace, ſoon after took their places on the bench, in the following order,—viz.

Lord Juſtice Clerk,
Lord Hailes, Lord Stonefield,
Lord Eſkgrove, Lord Swinton.

Silence being proclaimed, the Clerk of Court ordered a Macer to call Ilay Campbell, Eſq; his Majeſty's Advocate, for his Majeſty's intereſt, againſt William Brodie, ſome time wright and cabinet-maker in Edinburgh, and George Smith, ſome time grocer there;—which being done with the uſual forms and ſolemnities, the Lord Juſtice Clerk deſired the Priſoners to attend to the Indictment, then to be read.

Mr Norris, Depute Clerk of Court, then read aloud the Indictment, as follows:

" WILLIAM BRODIE, ſome time wright and cabinet-maker in Edinburgh, and GEORGE SMITH, ſome time grocer there, both priſoners in the tolbooth of Edinburgh, You are indicted and accuſed, at the inſtance of ILAY CAMPBELL, Eſq; his Majeſty's Advocate, for his Majeſty's intereſt; THAT ALBEIT, by the laws of this, and of every other well governed realm, THEFT, more eſpecially when attended with houſe-breaking, and when committed by breaking into a houſe uſed or kept as an Exciſe-Office, or other public office, under cloud of night, and from thence abſtracting and ſtealing money, is a crime of an heinous nature, and ſeverely puniſhable: YET TRUE IT IS, AND OF VERITY, That You, the ſaid William Brodie, and George Smith, are both, and each, or one or other of You, guilty actors, or art and part, of the ſaid crime, aggravated as aforeſaid; IN SO FAR AS, upon the night of the

the 5th day of March laſt, in this preſent year of our Lord 1788, or upon one or other of the days or nights of that month, or of February immediately preceding, or of April immediately following, You, the ſaid William Brodie, and George Smith, did, by means of falſe keys, or other inſtruments, wickedly and felonioufly break into *the** houſe in which the General Exciſe-Office for Scotland was then kept, in Cheſſells's buildings, on the South ſide of the High-ſtreet of Canongate of Edinburgh, within the royalty or liberties of the city of Edinburgh, and county of Edinburgh, and did thence felonioufly abſtract and ſteal money, to the amount of ſixteen pounds Sterling, or thereby, conſiſting partly of bank-notes, and partly of ſilver and halfpence. And You, the ſaid George Smith, having been afterwards apprehended, and brought before Archibald Cockburn, Eſq; ſheriff-depute of the county of Edinburgh, did, in his preſence, emit three ſeveral declarations; the firſt of date the 8th day of March, the ſecond of date the 10th day of March, and the third of date the 19th day of March, all in this preſent year of our Lord 1788: And, having afterwards been brought before John Stewart, Eſq; ſheriff-ſubſtitute of the ſaid county, You did, in his preſence, emit a fourth declaration, of date the 17th day of July, likewiſe in this preſent year 1788: The firſt of which declarations was ſigned by the ſaid Archibald Cockburn, the ſecond and third by You, the ſaid George Smith, and the ſaid Archibald Cockburn, and the fourth by You, the ſaid George Smith, and the ſaid John Stewart. AND FURTHER, You, the ſaid William Brodie, having, in the month of March laſt, when the ſaid George Smith was committed to priſon, left Edinburgh, and fled from this country; and having afterwards been brought back, and taken into cuſtody, did, upon the 17th day of July, in this preſent year 1788, in preſence of the ſaid Archibald Cockburn, Eſq; emit a declaration, which was ſigned by You, the ſaid

* This, and the other parts of the Indictment printed in Italics, were the ſubject of objection by the Counſel for the priſoner, William Brodie.

ſaid William Brodie, and the ſaid Archibald Cockburn; the whole of which declarations, together with a letter written by You the ſaid William Brodie, and ſigned *John Dixon*, dated at Fluſhing, Tueſday, 8th April 1788, twelve o'clock forenoon, and addreſſed to Mr Matthew Sheriff upholſterer Edinburgh; another letter, or two letters, on one ſheet of paper, written by You the ſaid William Brodie, and ſigned with your initials, dated Thurſday, 10th April 1788, and addreſſed to Mr Michaell Henderſon Graſs-market ſtabler Edinburgh; an unſigned ſcroll, or copy of a letter in the hand-writing of You, the ſaid William Brodie, marked No. 1. without date or addreſs; another unſigned ſcroll, or copy of a letter in the hand-writing of You, the ſaid William Brodie, marked No. 2. without date or addreſs; an account, or ſtate, in the hand-writing of You, the ſaid William Brodie, entitled, 'A ſtate 'of my affairs, as near as I can make out at preſent from memory, 'having no other aſſiſtance;' a letter, dated London, 1ſt May 1788, ſigned *Lee*, *Strachan*, and *Co.* and addreſſed to Meſſ. Em[l]. Walker and Co. merchants, Philadelphia; a *gold watch, with a chain, ſeal, and key*; a *cheſt, or trunk, containing various articles*; a *five pound bank-note*, an iron coulter of a plough, two iron wedges, an iron crow, a pair of curling irons or toupee tongs, a ſpur, a dark lanthorn, a pair of piſtols, ſeveral falſe keys and pick-locks, and two ſpring-ſaws, are all to be uſed in evidence againſt You the ſaid William Brodie and George Smith; and, for that purpoſe, will be lodged in the hands of the clerk of the High Court of Juſticiary, before which You are to be tried, in order that You may have an opportunity of ſeeing the ſame: AT LEAST, time and place foreſaid, the ſaid houſe in which the General Exciſe-Office for Scotland was then kept as aforeſaid, was feloniouſly broke and entered into, and a ſum of money feloniouſly and theftuouſly taken and ſtolen therefrom as aforeſaid; and You the ſaid William Brodie, and George Smith, above complained upon, are both, and each, or one or other of You, guilty thereof, actor or actors, or art and part.

ALL

ALL WHICH, or part thereof, being found proven by the verdict of an aſſize, before the Lord Juſtice General, Lord Juſtice Clerk, and Lords Commiſſioners of Juſticiary, You, the ſaid William Brodie, and George Smith, OUGHT to be puniſhed with the pains of law, to deter others from committing the like crimes in all time coming."

(Signed) ILAY CAMPBELL.

The Indictment being read, the Lord Juſtice Clerk then addreſſed the priſoners ſeverally as follows.

William Brodie, You have heard the Indictment raiſed againſt you by his Majeſty's Advocate—Are you Guilty of the crime there charged, or Not Guilty ?—The priſoner, William Brodie, ſtanding up, anſwered, *My Lord, I am Not Guilty.*

George Smith, You have heard the Indictment raiſed againſt you by his Majeſty's Advocate—Are you Guilty of the crime there charged, or Not Guilty ?—The priſoner, George Smith, alſo ſtanding up, anſwered, *Not Guilty, My Lord.*

The Lord Juſtice Clerk then aſked the Counſel for the priſoner, if they had any objection why the ſaid Indictment ſhould not be remitted to the knowledge of an aſſize ?

The Counſel for William Brodie ſaid, that they would not conſume the time of the Court in diſputing upon the relevancy of the Indictment, but craved a proof of all facts and circumſtances tending to exculpate or alleviate ; and would reſt the cauſe upon the iſſue.

Mr Solicitor Dundas, Counſel for the proſecutor, here deſired to know the nature and tendency of the exculpatory evidence propoſed

to be adduced, in order that, in the courſe of leading the proof upon the part of the proſecutor, they might be prepared to meet it.

The Court expreſſed their opinion, that this was but a fair requeſt, and conſiſtent with practice.

The Counſel for Mr Brodie upon this ſtated, that they meant to prove an *alibi;* and Mr John Clerk, as Counſel for Smith, reſted his defence on a ſimple denial of the charge, having no exculpatory proof to offer.

The Lords then pronounced the uſual interlocutor, "finding the "Indictment relevant to infer the pains of law; and remitted the "ſame to the knowledge of an aſſize; and allowed the exculpa-"tory proof craved."

The Clerk of Court then gave to the Lord Juſtice Clerk the following liſt of Forty-five Jurymen, duly ſummoned to attend this Trial.

LIST OF ASSIZE.

Andrew Bonar banker in Edinburgh
Alexander Houſton banker there
Robert Forreſter banker there
Robert Allan banker there
Henry Jamieſon banker there
John Hay banker there
William Creech bookſeller there
James Carfrae merchant there
William Gilleſpie merchant there
William Simpſon banker there

George

George Kinnear banker in Edinburgh
John Black merchant there
Francis Blair merchant there
Elphingſton Balfour bookſeller there
Peter Forreſter merchant there
John Thomſon inſurance-broker there
Thomas Elder merchant there
Edward Innes confectioner there
John Balfour merchant there
William Fettes merchant there
John Milne founder there
Dunbar Pringle tanner there
Peter Robertſon goldſmith there
Thomas Campbell merchant there
William Turnbull merchant there
Alexander Brown merchant there
Charles Cowan merchant there
David Paterſon inſurance-broker there
Francis Sharp merchant there
James Donaldſon printer there
John Hutton ſtationer there
John Balfour papermaker there
Robert Young upholſterer there
John Learmonth, junior, tanner there
Thomas Cleghorn coachmaker there
Thomas Hutcheſon merchant there
James Craig corn-merchant there
Alexander Bruce merchant there
Benjamin Yule baker there
William Smellie printer there
Orlando Hart ſhoemaker there
James Ranken merchant there

William Young baker in Edinburgh
William Brown grocer there
45 Alexander Weir painter there

Out of the above Forty-five Jurymen, the following Fifteen were called upon; and the priſoners being aſked if they had any objections why they ſhould not paſs upon this aſſize; and no objections being made, they were ſworn in, by the following oath, five at a time.

O A T H.

" You ſwear by Almighty God, and as you ſhall anſwer to " God at the Great Day of Judgment, that you will truth ſay, " and no truth conceal, ſo far as you are to paſs upon this Aſſize."

1 Robert Forreſter banker
2 Robert Allan banker
3 Henry Jamieſon banker
4 John Hay banker
5 William Creech bookſeller
6 James Carfrae merchant
7 George Kinnear banker
8 William Fettes merchant
9 John Milne founder
10 Dunbar Pringle tanner
11 Thomas Campbell merchant
12 Francis Sharp merchant
13 James Donaldſon printer
14 John Hutton ſtationer
15 Thomas Cleghorn coachmaker

LIST of WITNESSES to be adduced in the Trial for the Proſecutor.

1. John Brown, *alias* Humphy Moore, ſome time reſiding in Edinburgh, preſent priſoner in the tolbooth of Canongate of Edinburgh.
2. Andrew Ainſlie, ſome time ſhoemaker, preſent priſoner in the tolbooth of Canongate of Edinburgh.
3. Mary Hubbart, or Hubburt, ſpouſe of the ſaid George Smith.
4. Graham Campbell, ſome time ſervant to the ſaid George Smith.
5. Alexander Thomſon accountant of Exciſe in Edinburgh.
6. Peter M'Farlane, clerk in the office of the caſhier of Exciſe there.
7. Adam Pearſon affiſtant ſecretary of Exciſe in Edinburgh.
8. Janet Baxter, ſervant to the ſaid Adam Pearſon.
9. William M'Kay porter in the Canongate of Edinburgh.
10. John Duncan door-keeper to the exciſe-office Edinburgh.
11. Lawrence Dundas houſe-keeper of the ſaid Exciſe-office.
12. Margaret Black late ſervant to the ſaid Lawrence Dundas.
13. Margaret Bain late ſervant to the ſaid Lawrence Dundas.
14. James Bonar deputy-ſolicitor of exciſe Edinburgh.
15. Robert Smith wright in Edinburgh, late foreman to the ſaid William Brodie.
16. Iſobel Gilmour, ſpouſe of John Gilmour rope-maker in Weſt Bow, Edinburgh.
17. Daniel M'Lean, waiter to William Dryſdale innkeeper in the New Town of Edinburgh.
18. Patrick Taylor ſmith in Edinburgh.
19. Charles MacLeod apprentice to the ſaid Patrick Taylor.
20. Jacobina Pearſon, ſpouſe of Hugh Macpherſon ſhoemaker in Duddingſton, near Edinburgh.

21. John Kinnear ſervant to the Earl of Abercorn, at Duddingſton.
22. Robert Tait ſervant to the Earl of Abercorn there.
23. Iſobel Wilſon, ſpouſe of Adam Robertſon wright in Duddingſton.
24. John Clerk, book-keeper to William Dryſdale innkeeper in the New Town of Edinburgh.
25. David Robertſon merchant in Edinburgh.
26. John Geddes tobacconiſt in Mid-Calder, and county of Edinburgh.
27. Margaret Tweddle, *alias* Geddes, ſpouſe to the ſaid John Geddes.
28. James Laing writer in Edinburgh.
29. John M'Leiſh, clerk to Mr Hugh Buchan city-chamberlain of Edinburgh.
30. George Williamſon meſſenger at Arms in Edinburgh.
31. William Middleton meſſenger at arms in Edinburgh.
32. James Murray ſheriff-officer in Edinburgh.
33. Alexander Williamſon ſheriff-officer there.
34. James Fraſer ſheriff-officer there.
35. Archibald Cockburn, Eſq; ſheriff-depute of the county of Edinburgh.
36. John Stewart ſheriff-ſubſtitute of the ſaid county.
37. William Scot procurator-fiſcal of the county of Edinburgh.
38. William Auguſtus Wiſhart, clerk to the ſaid William Scot.
39. Joſeph Mack writer in ſheriff-clerk's office, Edinburgh.
40. Alexander Fraſer grocer and change-keeper in the New Town Edinburgh.
41. Laurence Blair, ſervant to Mr Charles Hope, advocate.
42. Thomas Longlands ſolicitor at law in London.

(Signed) ILAY CAMPBELL.

The

The Jury being impanelled, and furniſhed with pen, ink, and paper, and copies of the Indictment being laid before them, the Court ordered the Counſel to proceed to the evidence. But, before we give an account of the evidence, we ſhall here mention the Counſel for the Proſecutor and for the Priſoners.

Counſel for the Proſecutor,

Ilay Campbell, Eſq; Lord Advocate,
Robert Dundas, Eſq; Solicitor General,
William Tait, Eſq;
James Wolfe Murray, Eſq; } Depute Advocates.
Agents.—Mr Robert Dundas, Agent for the Exciſe Office,
Mr Hugh Warrender, Agent for the Crown.

Counſel for the Priſoner William Brodie,

The Honourable Henry Erſkine, Dean of Faculty,
Alexander Wight, Eſq;
Charles Hay, Eſq;
Agents.—Mr Robert Donaldſon Writer to the Signet,
Mr Alexander Paterſon Writer in Edinburgh.

Counſel for George Smith.

John Clerk, Eſq;
Robert Hamilton, Eſq;
Mr Eneas Morriſon, Agent.

Before the evidence was led, *Mr Wight*, one of Mr Brodie's counſel, roſe and objected to the Indictment as faulty, in being ſo extremely vague, many of the articles libelled on being only generally named, and ſo imperfectly deſcribed, that it was impoſſible to identify them. He mentioned, in particular, that a gold watch, with

with a chain and ſeal, was libelled on; but neither the maker's name, nor number of the watch, nor the figure on the ſeal, were ſpecified, ſo as that it could be diſtinguiſhed from any other gold watch, with a chain and ſeal. As another inſtance of this imperfect deſcription, the libel mentioned a cheſt or trunk, containing various articles. There was no particular deſcription of the cheſt or trunk, or of any of the articles it contained. It was not ſaid, that it was a hair trunk, or the ſize or ſhape of it, or any other mark condeſcended upon, whereby it could be diſtinguiſhed. That the proſecutors themſelves were ſo much miſled by this want of deſcription, that they had ſent the trunk referred to, or meant to be referred to, in the libel, to the priſon to Mr Brodie, and had lodged a wrong trunk with the clerks of Court; and that they did not diſcover this miſtake till yeſterday morning, when they applied for a warrant to get back the right trunk from Mr Brodie; in conſequence of which, it was recovered.

That, although he had thrown out this general objection, he did not mean to plead it to the effect of ſetting aſide the libel altogether; yet, when the Proſecutor attempted to apply his evidence to theſe articles, he reſerved to himſelf the liberty of making ſpecial objections to each article, as it ſhould be referred to.

The *Lord Advocate* anſwered, That theſe articles were only to be founded upon as circumſtances of evidence; and, in that view, it was not neceſſary to deſcribe them more particularly than they were in this libel: That, if every nail of a trunk, or every trinket of a watch, or other articles, which it might be neceſſary to found upon in trials of this kind, were to be ſo particularly deſcribed as Mr Wight had contended for, it would ſwell indictments to a very inconvenient and unneceſſary length: That, indeed, a miſtake had happened with regard to the trunk, but it was diſcovered and rectified in proper time: That Mr Brodie could not ſay that he ſuffered

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in any ſhape by the trunk not being produced ſooner, as it was all the time in his own poſſeſſion; and, with regard to the watch, all the uſe he meant to make of it, was to identify ſome letters from Mr Brodie, which were ſealed with the ſeal appended to it.

The *Dean of Faculty* replied, That the objection was of the deepeſt importance in point of law. The records of the Court afforded no inſtance of an Indictment ſo vague as the preſent: That many articles were produced not mentioned in the libel at all: That the very purpoſe of mentioning, and condeſcending upon the articles to be uſed in evidence, was to identify theſe articles; and without ſuch a deſcription as could identify them, the intention of the law was eluded; priſoners could not come prepared, as they could not foreſee the uſe that was to be made of them; and articles might be changed after the priſoners had ſeen them, and ſatisfied themſelves that they could eſtabliſh nothing againſt them: That, if the looſe manner in which this Indictment was laid received the countenance of the Court, it might lead to a variety of conſequences inconſiſtent with the ſecurity of individuals: That, if the *corpus delicti* was not particularly deſcribed, ſo as to prevent the poſſibility of doubt with regard to the identity of it, the deareſt rights of mankind might be endangered, and at the mercy of corrupt men; and no one could ſay how fatal the conſequences might be.

The *Lord Advocate* admitted the juſtice of what the Dean of Faculty had ſtated, if ſuch an objection as the preſent was made to the deſcription of the *corpus delicti:* That, if the priſoners were charged with having ſtolen the watch, or trunk, mentioned in the Indictment, the deſcription there given of them would not be ſufficient; but, as they were not the *corpus delicti*, and only referred to as circumſtances of evidence, he contended, that the deſcription was ſufficient; but, rather than detain the Court longer with an objection of

this kind, he would give up the trunk altogether, as he did not ſuppoſe that he would ſtand in need of it; he, however, ſubmitted the matter to the Court.

The *Lord Juſtice Clerk* then ſaid, Your Lordſhips have heard the objection and anſwers on this point, What is your opinion?

Lord Hailes delivered his opinion, That he ſaw a very neceſſary and proper diſtinction between the deſcription of the *corpus delicti*, and of an article that was only referred to as a circumſtance of evidence: That ſome articles in this indictment were more vaguely ſtated than he had ever ſeen; particularly when it mentioned a trunk containing *various articles:* That, if theſe various articles were to be uſed in evidence againſt the priſoners, he thought the objection to the deſcription of them a good one; but, if it was only the trunk itſelf that was meant to be founded upon, he thought the deſcription of it ſufficient.

Lord Eſkgrove ſaid, He thought that it would be hard to deny the proſecutor the benefit of the evidence of theſe articles: That he thought the deſcription of them ſufficiently accurate: That no more was neceſſary, upon the part of the proſecutor, than ſuch a deſcription as was here given, when the articles were referred to only as circumſtances of evidence, not as the *corpus delicti;* and, therefore, was for repelling the objection.

Lord Stoneſield and *Lord Swinton* were of the ſame opinion.

The *Lord Juſtice Clerk* thought that the objection was of importance, and would be a good one, if it referred to the *corpus delicti;* but not in the preſent caſe. That the production of articles of *evidence* libelled on previous to trial, had been introduced by practice, not

not by any poſitive law, and proceeded from proper motives of candour and lenity upon the part of the proſecutor: That he ſaw no poſſible injury that the priſoners could ſuffer for want of a more particular deſcription of ſome of the articles libelled on; and was for repelling the objection.

The Court then unanimouſly pronounced an interlocutor repelling the objection.—But, before recording the ſame, the Dean of Faculty craved that he might be allowed to give in a minute, ſtating his objection in writing, that it might appear upon the record; and likewiſe begged that it might be underſtood, both by the Court and the Counſel for the proſecution, that the objection ſhould be held as repeated, whenever the articles, the deſcription of which were objected againſt, ſhould be referred to as evidence, which would ſave an unneceſſary repetition of it; which requeſt the Court thought reaſonable, and ordered accordingly.

The Court then proceeded to the evidence. The firſt witneſs called upon was *William Scott*, Procurator-fiſcal for the county of Edinburgh.

To ſave repetition, we ſhall here give the form of the oath which is adminiſtered to every witneſs examined before this high Court.

The witneſs being brought to the foot of the Clerk's table, the Court aſk the priſoners, or their Counſel, if they have any objection to the witneſs. The Lord Juſtice Clerk, or the other Judges in rotation, aſk the witneſs's name. The witneſs is then deſired to hold up his (or her) right hand, and repeat the following oath:

"I

" I ſwear by Almighty God, and as I ſhall anſwer to God at the " Great day of Judgment, I will tell the truth, the whole truth, and " nothing but the truth, as far as I know, and it ſhall be aſked of " me."

The witneſs then takes down the right hand. The Judge aſks the witneſs if he (or ſhe) has been inſtructed what to ſay; or if any perſon has promiſed a reward for being a witneſs. The Judge then deſires the witneſs to look at the priſoners, and aſks if he (or ſhe) has any malice or ill-will at the priſoner. All which interrogations being anſwered in the negative, the Counſel for the proſecutor proceeds to aſk their queſtions.

WITNESS I.

William Scott, Procurator-fiſcal, being ſhown the four declarations of Smith, as deſcribed in the libel; and alſo the declaration of Brodie—he identified the ſame: That they were all emitted in his preſence, freely and voluntarily, and that no compulſion or undue means was uſed to induce the priſoners to ſign theſe declarations: That every thing declared before the Sheriff was taken down in writing: That, on the 10th of March laſt, he, as Procurator-fiſcal, made an application to the Sheriff for a warrant to apprehend Brodie: That ſearch was accordingly made for him; but he was not to be found: That, in the courſe of that ſearch, he learned that Mr Brodie was abſconded; and that he was gone for London: That the priſoner, Smith, was apprehended on Saturday the 8th of March; and was in priſon at the time the ſearch was made for Brodie.

W I T. II.

Joſeph Mack, writer in the Sheriff-clerk's office, being ſworn and examined as above, concurred with the preceding witneſs *in omnibus*; with this addition, that theſe declarations are all in his hand-writing; and that he wrote them to the diction of the Sheriff. Being aſked by the Counſel for the priſoners, If all that Smith had ſaid was taken down? anſwered, That every thing material was: That with regard to the robbery of *Bruce's ſhop*.—Here the Court ſtopped him, as that was not before them.

W I T. III.

Thomas Langlands, Eſq; Solicitor at Law, London.—That, in the month of June laſt, he was employed by the Crown agent for Scotland to inſtitute a ſearch for Mr Brodie; in conſequence of which he applied to the Secretary of State's Office, and gave them the information he had received from Scotland: That he likewiſe waited upon Sir Sampſon Wright, and had different conſultations with him upon the moſt proper means of conducting the ſaid ſearch: That as the information received gave reaſon to ſuſpect that Mr Brodie was at Fluſhing, Oſtend, or ſome place in Holland, it was agreed upon to ſend a meſſenger immediately in ſearch of him: That Mr Groves, from Sir Sampſon Wright's office, was accordingly ſent with proper inſtructions: That Mr Groves traced him to Oſtend, and learned that he had been there on the 4th of June, his Majeſty's birth-day; and from that he traced him to Amſterdam, where he was apprehended, identified, and committed to priſon: That, upon proper application, he was delivered up, brought over, and carried to Sir Sampſon Wright's office for examination: That the deponent was preſent at ſaid examination; and the priſoner, Brodie, at the bar is the

perſon that was ſo brought over and examined: That there were two trunks or cheſts belonging to Mr Brodie, alſo brought over by Mr Groves, and lodged in Sir Sampſon Wright's office, which were opened and examined in the office: That they contained ſundry articles of clothes, &c. and, among other particulars, a bundle of papers. And being ſhown the different letters, ſcrolls, and ſtate of his affairs, written by Mr Brodie, and libelled on, depones, That they are the ſame that were found in the ſaid trunk, as he knows them, not only from ſome peculiar expreſſion in the ſaid letters which he remembers, but alſo from his initials, with which they were marked at the time. He was alſo ſhown the gold watch mentioned in the Indictment, and ſwore that it was the ſame found in the ſaid trunk, as he took the number and maker's name.—Upon croſs examination by the Dean of Faculty, ſaid, he had no other means of information; that the articles in the ſaid trunks or cheſts are the ſame that were brought from Oſtend and Amſterdam, but the information of Sir Samſon Wright, and the letters accompanying the ſame, which he ſaw, and his being preſent when the trunks were opened.

W I T. IV.

John Geddes tobacconiſt in Mid Calder.—That he was in London in the month of March laſt, and he and his wife took their paſſage in the Endeavour of Carron, Captain Dent, bound for Leith, on a Saturday: That, on the Sunday, the veſſel fell two or three miles down the river, and anchored at Blackwall: That, in the evening, the Captain went on ſhore to get hands, leaving the witneſs and his wife on board: That, betwixt the hours of 10 and 12, Meſſrs Hamilton and Pinkerton, two of the owners of the veſſel, another gentleman he did not know, and a paſſenger that appeared ſickly, came on board: That the paſſenger was dreſſed in a blue great coat, with a red collar, round wig, black veſt and breeches, and boots: That the

the ſaid three gentlemen that came aboard with the paſſenger, after ſtaying about a quarter of an hour, left the veſſel: That the paſſenger was allotted a bed in the ſtate-room near the fire, as he was ſick: That next day they fell down the river, and the veſſel got aground off Tilbury Point, where they lay 10 or 12 days; during which time the ſaid paſſenger was twice on ſhore, once by himſelf, and another time with the maſter and witneſs: That, for the firſt four or five days the ſaid paſſenger was on board, he went by the appellation of the Gentleman; but the witneſs having aſked his name, he ſaid it was *John Dixon.* And being aſked, If he would know that perſon again? ſaid, He could. Was deſired to look at the priſoners at the bar, and ſay if he knew any of them; upon which he pointed out Mr Brodie to be the ſame perſon above mentioned, that had called himſelf *John Dixon:* That, on getting out to ſea, Mr Dixon delivered a letter to the Captain; in conſequence of which, he altered his courſe, and ſteered for Holland: That it was not by ſtreſs of weather that they altered their courſe, as the wind was ſouth-weſt, and fair for Leith: That, during the voyage, Mr Dixon complained much of a ſore throat: That they arrived at Fluſhing, where Mr Dixon hired a ſkiff for Oſtend: That the witneſs went on ſhore, and received a packet of letters from Mr Dixon, to be delivered in Edinburgh: That they did no buſineſs at Fluſhing; and was of opinion, that they did not come there with that intention: That, after landing Mr Dixon, they ſailed for Leith; and, on his arrival there, was ſatisfied, from the accounts he had heard about Brodie, that it was him they had carried to Fluſhing, under the name of John Dixon: That next day the witneſs went to Dalkeith, where he had occaſion to ſee the newſpapers, and the deſcription of Brodie there given, which confirmed him in the above ſuſpicion. Upon this he opened the packet, which contained three letters; one to Mr Michael Henderſon, Graſs Market; one to Anne Grant; and one to Mr Matthew Sherriff; ſigned and dated as mentioned

tioned in the Indictment: That he read the inſide of theſe letters; and the letters libelled on being ſhown to him, he ſwore to their identity.

Croſs examined by the Dean of Faculty.—The witneſs having ſaid, that they did not go to Fluſhing upon buſineſs, was aſked, If he did not purchaſe ſome goods there? anſwered, That he purchaſed two pieces of nankeen, and ſix ſilk handkerchiefs, with ſome ſpirits for ſea-ſtore, and half a pound of tobacco for his own uſe. And being more cloſely queſtioned, acknowledged, that his wife purchaſed three pieces of lace, ſome of which ſhe ſold after ſhe came to Edinburgh. Being aſked, Why he opened the letters? anſwered, That it was to do juſtice to his country, as he knew Dixon and Brodie to be the ſame perſon: That he kept theſe letters three weeks or a month in his poſſeſſion: That the firſt perſon he ſhowed them to was one Tweddle, his brother-in-law, who adviſed him to give them to the perſons to whom they were directed: That he afterwards ſhowed them to Mr Learmonth at Linlithgow, who gave him a letter to Mr Learmonth in Edinburgh: That he then carried them to Mr Erſkine, the Dean of Faculty, but did not recollect what he deſired him to do with them.

Here the Dean of Faculty informed the Court, in preſence of the witneſs, That he had ſaid, he was not the proper perſon to apply to with theſe letters: That he had been conſulted in Mr Brodie's affairs: That the witneſs himſelf knew beſt the directions that he had received from the perſon who committed theſe letters to his charge; and he left it to his own conſcience to do with them what he pleaſed.

The witneſs then informed the Court, that he went home to Mid Calder, and that the ſame evening, or early next morning, Mr Scott, procurator-

procurator-fiſcal, and Mr Williamſon, meſſenger, called upon him, and he accompanied them to Edinburgh, and delivered the letters to the Sheriff.

W I T. V.

Margaret Tweddle, ſpouſe to the foregoing witneſs, corroborated her huſband's evidence in every circumſtance previous to their arrival in Leith, identified the perſon of Mr Brodie, and ſaid, That ſhe ſaw him deliver the packet of letters to her huſband, but that ſhe never ſaw theſe letters afterwards.

W I T. VI.

Robert Smith, ſome time foreman to Mr Brodie, remembered that he was ſent for by his maſter on Sunday morning, the 9th of March, at 8 o'clock: That he thought it was to give him orders about ſome work, as he frequently ſent for him for that purpoſe, eſpecially when he was going to the country: That Mr Brodie aſked him, If he had heard any thing of the men that were taken up the day before, meaning Smith and Ainſlie? the witneſs anſwered, That he had not; but hoped that Mr Brodie was not concerned with them. To this Mr Brodie made no anſwer: That the reaſon he aſked this queſtion was, that he had often ſeen his maſter in their company, and knew him to be intimate with them: That Mr Brodie ſent the witneſs for a waiſtcoat and pair of breeches, ſaying, he was going out of town, but would be home in his own houſe before he went away; but the witneſs did not ſee him again till he ſaw him in priſon: That Mr Brodie's houſe was ſearched on Monday following, the 10th of March, by a warrant from the ſheriff. Being ſhown the letters, and ſtate of affairs, libelled on, thought them very like Mr Brodie's hand-writing; but that the unſigned ſcrolls were not

like his maſter's writing, as he had never ſeen him uſe ſo many interlineations and blottings.

W I T. VII.

James Laing writer, and aſſiſtant clerk in the council-chamber, being ſhown the different letters, ſcrolls, and ſtate of affairs, libelled on, thought that they were all, and each of them, of Mr Brodie's hand-writing, which he had often had occaſion to ſee.

W I T. VIII.

John M'Leiſh, clerk in the city chamberlain's office, ſaid, he had had many opportunities of ſeeing Mr Brodie's hand-writing, and would know it; and having examined the ſaid letters, ſcrolls, and ſtate, authenticated the ſame to be Mr Brodie's writing. Croſs examined, How he came to know Mr Brodie's writing ſo exactly? anſwered, From many accounts and receipts which he had in his cuſtody belonging to the office.

W I T. IX.

John Duncan, door-keeper of the Exciſe, ſaid, That he had been in that office for 37 years: That he uſually locked the outer-door about eight o'clock at night, and carried the key immediately thereafter to the houſekeeper: That the night watchmen came at ten o'clock, and went away at five in the morning; That, on Wedneſday the 5th of March laſt, he locked the outer-door at about a quarter after eight o'clock in the evening, and carried the key to the houſekeeper's, and delivered it to one of the maid ſervants.—Being croſs queſtioned by the Counſel for Mr Brodie, ſaid, That Mr Broughton's office, and the regiſter of ſeizures, were kept in a ſmall houſe

houſe oppoſite, and adjoining, but that there was no communication from the one to the other without going out to the open air; and the whole were in one court, incloſed by a parapet wall and iron rail: That the caſhier's room lay within the outer-door which he had locked, as above mentioned, and that it had a double door.

W I T. X.

William Mackay, employed as watchman of the Exciſe, ſaid, That, on Wedneſday the 5th of March laſt, when he went to attend his duty, as uſual, at 10 o'clock at night, he found the outer-door, the hall-door, and the doors of the caſhier's room, all open. Upon this he went to Mr Dundas, the houſekeeper's, and inquired who had laſt been in the office, as the doors were open? the ſervant anſwered, John Duncan, the laſt witneſs, had left it about a quarter after eight o'clock: That Mr Dundas's ſon having overheard this converſation, ſaid, if the doors are open, there is ſomething worſe done: That, upon this, Mr and Mrs Dundas, their ſon, and the witneſs, went into the office, and found all the deſks and preſſes in the caſhier's room opened: That there was lying in the caſhier's room the coulter of a plough, and two iron wedges; and, in the hall, there was a ſpur, with part of the leather of it torn; and being ſhown the coulter, wedges, and ſpur, libelled on, ſaid they were the ſame ſo found: That Mr Dundas then ſent him for Mr Thomſon, the aſſiſtant caſhier of Exciſe; and he went and brought Mr Thomſon along with him.

W I T. XI.

Alexander Thomſon aſſiſtant caſhier of Exciſe in Edinburgh, ſaid, That, on Wedneſday the 5th of March laſt, he left the Office about eight o'clock at night: That he locked the door of the caſhier's room

before

before he went away, and took the key with him, and ſaw John Duncan, the door-keeper, in the hall as he came out: That he left L. 15 : 16 : 3½ in his deſk, and about L. 600 in a drawer below the deſk: That, about ten o'clock the ſame evening, the Office porter, or watchman, came and told him, that the Exciſe Office was broke into: That he went immediately there, and found Mr Pearſon, the ſecretary, and Mr Dundas, in the Office: That, along with them, he examined the door of the caſhier's room, and found that it had been prized open, and, as they ſuppoſed, with the coulter and wedges found there, which he identified to be the ſame libelled on: That a ſmall preſs in this room had alſo been forced open, and ſome ſhillings and ſixpences ſtole from it, together with ſome ſtamps for receipts: That they had got the key of the witneſs's deſk in a drawer in this preſs, with which they had opened the deſk, and carried off the ſum of money above mentioned therein contained, and a receipt for L. 7 : 18 : 2: That the drawer below the deſk where the L. 600 was depoſited, cannot be opened without firſt opening the deſk; and the key-hole is concealed by a ſlip of wood over it, which might eſcape a ſlight obſerver: That, accordingly, it had remained untouched, although the key of it lay in the deſk. Being croſs examined with regard to the ſituation of the Office, concurred in the deſcription formerly given of it.

W I T. XII.

Laurence Dundas houſe-keeper of the ſaid Exciſe Office, confirmed the ſeveral particulars deponed to by the preceding witneſſes.

W I T. XIII.

Janet Baxter.—That ſhe was ſervant to Mr Pearſon of the Exciſe at the time the Office was robbed; and, on that evening, being ſent out on a meſſage a little after eight o'clock, on her coming home again,

again, ſhe ſaw a man with, a whitiſh great coat and ſlouch hat, leaning over the rail, at the entry to the court: That ſhe was afraid of him, and run away to the houſe, as ſhe thought him a light, or ſuſpicious perſon.

W I T. XIV.

James Bonar deputy-ſolicitor of Exciſe.—That he had occaſion to call at the Exciſe Office on the night it was robbed, the 5th March laſt, about half paſt eight o'clock: That he found the door on the latch; and, on opening it, a man ruſhed paſt him: That the witneſs ſtepped aſide, to give way to him: That the man went out in ſeeming haſte; and the witneſs took no ſuſpicion, thinking it was ſome of the people belonging to the Office detained later than uſual: That he appeared to be a ſquare-built man, ſomething taller than the witneſs *: That the witneſs went up ſtairs to the ſolicitor's office, ſtaid two or three minutes there, and then went away: That he ſaw no perſon either in the entry or court as he came out.

W I T. XV.

Iſobel Wilſon, alehouſe-keeper at Weſter Duddingſton, remembers, that, in the beginning of March laſt, two men came to her houſe, and drank a bottle of porter: That ſoon after ſhe was examined in the Sheriff-clerk's office, in the preſence of John Brown, (a ſucceeding witneſs,) whom ſhe pointed out there as one of theſe men.

* The reader is here requeſted to take notice, for the ſake of explaining what is to follow, that the above witneſs entered the Office—a perſon ruſhed haſtily paſt him—and that the witneſs, after two minutes ſtay, alſo came out.

W I T. XVI.

John Kinnear, ſervant to the Earl of Abercorn, at Duddingſton, remembered, That, in ſpring laſt, but could not condeſcend on the particular day, that the coulter of a plough, with which he had been ploughing, was ſtolen: That he looſed from work that day between two and three o'clock, and was ſent to Edinburgh: That, about four o'clock, he perceived two men upon the ploughed land by the plough he had left: That they had with them a black dog *: That when he came to work next morning, he found the coulter of the plough had been taken away; and being ſhown the coulter libelled on, ſwore that it was the ſame ſo ſtolen from his plough. And being croſs-examined, how he came to know it, ſaid, that it had been ſent to a ſmith to be ſharped from the point to the hilt; but that part of it had been left undone.

W I T. XVII.

Graham Campbell, late ſervant to the priſoner, George Smith, ſaid, That ſhe never heard of the Exciſe Office being broken into till ſhe was apprehended with her miſtreſs, and Andrew Ainſlie, and carried to priſon: That ſhe had ſeen the priſoner, Brodie, often in her maſter's houſe; and had ſeen Ainſlie and Brown often with him there: That one night, ſome few days before ſhe was apprehended, the four were together in her maſter's houſe: They met about the duſk

* On taking the precognition at the Sheriff-clerk's chamber a curious circumſtance occurred reſpecting this black dog.—Smith, the priſoner, was under examination; and the above witneſs, Kinnear, was alſo preſent. Kinnear had ſaid to the Sheriff that he was at ſuch a diſtance that he would not know the men, but he would know the dog, he having been at one time near him. Soon after a dog was making a noiſe, and, ſcraping at the door, which being opened, the above witneſs ſaid, there is the dog; and it ran and fawned upon Smith.

duſk of the evening, but what hour ſhe could not ſay, as ſhe was employed in the back kitchen at work: She ſaw Brodie come in, and go up ſtairs to the room above: That Brodie had on black clothes, and old faſhioned: That ſhe never ſaw him ſo dreſſed before; and that ſhe ſaid to her miſtreſs, ſhe wondered how Mr Brodie came to have ſuch old-faſhioned clothes that night: That her maſter, Smith, was up ſtairs with Brown and Ainſlie when Brodie came in, and joined them: That they ſtaid together ſome time above ſtairs; and they had a cold fowl and ſome *freſh herrings* to eat: That ſhe did not ſee them go out, being at work in the back cellar; but when ſhe came into the kitchen, her miſtreſs deſired her to go up ſtairs to put the room in order, and wipe down the table, which ſhe did; and at that time they were all gone: That, about an hour after, they came all back again; Ainſlie came firſt, and afterwards Brown, aſking for Ainſlie: That the time they ſo met again altogether was near ten o'clock; and ſhe obſerved that Mr Brodie's dreſs was changed at his return, and he had on light coloured clothes: That they ſat in the kitchen, and ſupped there, and ſtaid about two hours: That Brodie went away firſt, and Brown and Ainſlie followed ſoon after; and that ſhe heard theſe two laſt expreſs an intention, firſt of going to bed, and afterwards of going over to Maclean to play cards: That her maſter did not go out again that night.

WIT. XVIII.

Mary Hubbart or *Hubburt*, ſpouſe to the priſoner George Smith, being then called, *Mr Clerk* objected to her examination, as ſhe was diſqualified on account of the relation in which ſhe ſtood to his client, as any evidence which ſhe could give, tending to criminate Mr Brodie, would have the ſame tendency againſt her huſband, as they were accuſed of the ſame crime, and included in the ſame manner.

The

The *Lord Advocate* anſwered, That he did not mean to put any queſtions to the witneſs that had the moſt remote tendency to criminate her huſband; and, in order to convince the Court of the relevancy of what he propoſed, he would ſubmit them to the judgment of the Court.

Upon this point the Court agreed, that, by the criminal law of Scotland, a wife cannot be admitted a witneſs for or againſt her huſband; and that, in this caſe, if any improper queſtion ſhould be aſked, it would not be allowed to be anſwered; but they ſaw no reaſon why ſhe might not be examined as to Brodie.

The Lord Advocate was then deſired to read the queſtions he propoſed to put, which were as follows: 1. Do you remember when the Exciſe Office was broke into? 2. Was Brodie in your houſe that evening? 3. Did you ſee him twice—and how was he dreſſed?

On having heard the queſtions, the Court repelled the objection for the priſoner, and allowed them to be put.

The witneſs being then recalled *, the Dean of Faculty aſked her name, which ſhe ſaid was Mary *Hibutt*. The Dean upon this ſaid, there was no ſuch perſon in the liſt of witneſſes annexed to the indictment: That he indeed ſaw there a Mary *Hubbart*, or *Hubburt*, but this was perfectly different from *Hibutt*, and as different as *Friſkin* from *Erſkine*. Some difficulty having ariſen about this name, the witneſs both *ſpelt* and *wrote* it, at the deſire of the Court, although

* This witneſs was much affected on coming into Court. On paſſing her huſband, the priſoner at the bar, ſhe looked at him with much ſeeming agitation. He ſtretched out his hands, and, in a loud whiſper, intreated her not to anſwer a word to any queſtion that ſhould be put to her.

though the Lord Advocate mentioned, that, in her declaration taken before the ſheriff, ſhe ſaid ſhe could not write.

The Lord Advocate ſaid, that the circumſtances he meant to prove by the witneſs were ſo immaterial, that he would not trouble the Court farther with the matter, and ſhe was withdrawn.

W I T. XIX.

Daniel M'Lean, waiter to Mr Dryſdale innkeeper New-Town.—That he was in company with Brown and Ainſlie on Wedneſday night, the 5th of March: That one Price, and ſome other people, were in company, and they drunk ſome punch together in Fraſer's cellar: That he thought this happened ſome time betwixt eight and half paſt nine o'clock, but was not certain: That, on the Friday following, he received from Smith a five pound note to change, for a ticket in the mail-coach for Smith's wife to Newcaſtle.

W I T. XX.

John Clerk, book-keeper to the ſaid William Dryſdale, remembered the laſt witneſs applying to him for change of a five pound note for a ticket in the mail-coach to Newcaſtle, and thought it was the night after the Exciſe was broke into.

W I T. XXI.

David Robertſon, hardware merchant in Edinburgh, remembered having ſold, ſome months ago, a ſpring-ſaw to Mr Brodie, but could not ſay that either of the ſaws libelled on, and here ſhown to the witneſs, were the ſame he ſo ſold, although they both bore his ſhop

mark: That Mr Brodie ſaid the uſe he was to make of it was to to cut cocks heels.

WIT. XXII.

William Middleton, in the employment of the ſheriff's-office, ſaid, That he was acquainted with John Brown, and remembered the robbing of the Exciſe Office: That Brown came to him on Friday night, the 7th of March, at 11 o'clock at night, and told him he had ſome diſcoveries to make reſpecting that robbery, and the other late ſhop-breakings: That the witneſs carried him to the procurator-fiſcal; and that, after a converſation, they went with Brown to Saliſbury Crags, where he pointed out, in a concealment, a great many falſe keys, which they brought to the procurator-fiſcal's houſe: That, the day thereafter, the witneſs was ſent to England, along with Brown, in ſearch of the goods ſtolen from the ſhop of Inglis and Horner ſilk mercers, and Mr Frier, a partner of that houſe, accompanied them: That, after his return from England, the witneſs was employed, on Sunday the 16th of March, to attend Smith, the priſoner, on a diſcovery, accompanied with Alexander Williamſon and James Murray, ſheriff-officers: That Smith, accordingly, conducted them to the foot of Warriſton's Cloſe *, when he took out of

* A diſcrepancy here appears betwixt the above witneſs and a following witneſs, James Murray, who, with Middleton, accompanied the priſoner *Smith* to the place. Murray ſaid, at the foot of Allan's Cloſe, below the Royal Exchange; and Warriſton's Cloſe is above the Exchange, or weſt, the other eaſt. Since the trial, we were at pains to have an explanation of this inconſiſtency, and went with Middleton to the ſpot. He conducted us down Warriſton's Cloſe; and, at the bottom of the ſteps at the foot of it, in the wall, immediately on the right hand, or to the eaſt, and not three feet from the ſteps, he pointed out the hole where the iron crow and other inſtruments were found. He was aſked, how he and Murray came to diſagree?

of a hole in a wall there an iron crow, a pair of curling-irons, and a falſe key, which he ſaid had been uſed in breaking open the Exciſe Office; and being ſhown theſe articles libelled on, ſwore to their being the ſame, and that Smith himſelf took them out of the hole: That, on the day following, he was employed to ſearch Brodie's houſe, and found there a dark lanthorn, part of it in one place and part of it in another: That the lanthorn produced, and here ſhown to him, he believed to be the ſame.

W I T. XXIII.

Alexander Williamſon ſheriff-officer ſaid, That, along with George Williamſon and James Murray, he was employed to ſearch Brodie's houſe on the 10th of March laſt: That, in the courſe of ſaid ſearch, they found in a ſhade a pair of piſtols, wrapped in a green cloth, and buried underneath the hearth, or where the fire-place was; and, being ſhown the piſtols libelled on, ſaid they were the ſame ſo found.

W I T. XXIV.

James Murray ſheriff-officer, concurred with the two preceding witneſſes in every particular reſpecting the ſearch of Brodie's houſe, and

agree? He ſaid, it was true they went by Allan's Cloſe, turned into Mary King's Cloſe, and then weſt to the hole then pointed out. In ſhort, the one witneſs, Murray, deſcribes it by the road they took; the other, Middleton, by the real ſituation of the place. Middleton acknowledged that he was wrong in ſaying Smith put in his hand, and drew out the inſtruments. He was hand-cuffed, and could not ſtretch his arm: He only put his fingers to the mouth of the hole, to point it out, and Murray put in his arm, as he immediately recollected after he left the Court. Both Middleton and Murray agree that the hole is the ſame where they found the iron crow, &c. and it is directly at the foot of Warriſton's Cloſe.

and the articles there found: That Smith the priſoner pointed out the place, and found the piſtols, by digging the earth: That he accompanied Middleton and Smith when they went to ſearch for the iron crow, key, &c. as mentioned: That they went by Allan's cloſe, and were found in a hole in a wall at the foot of the ſame, and were taken out of the hole by the witneſs, as Smith could not do it, being hand-cuffed *: That Smith told the witneſs that they were the ſame that were uſed in breaking open the Exciſe Office; and the articles being ſhown to the witneſs, ſwore to their identity.

WIT. XXV.

George Williamſon meſſenger at arms, and King's meſſenger for Scotland.—That on the 10th of March laſt he was employed to ſearch Brodie's houſe, and found ſeveral keys of a curious conſtruction in a room of Brodie's ſhop: That in the wood yard, near about where a hearth or fire place had been, a pair of piſtols were found under ground, which were diſcovered by Smith the priſoner, poking with an iron; and that the piſtols on the table are the ſame ſo found: That they alſo found ſeveral pick-locks in Mr Brodie's houſe, all which were lodged by him in the Sheriff-clerk's office: That, on the 11th of March, he was deſpatched in ſearch of Mr Brodie: That the firſt traces he got of him was at Dunbar, and from that traced him all the way to London, and found that he had been ſet down at the foot of Old Street: That he waited upon Sir Sampſon Wright, and alſo upon Mr Walker of the Adelphi: That in the courſe of his converſation with Mr Walker, he inquired after Mr Brodie, and ſaid he had a letter for him, which he wiſhed to deliver: That Mr Walker ſaid he was not certain if it would be ſafe to introduce the witneſs to Mr Brodie. Here the Dean of Faculty interrupted Mr Williamſon

* For explanation of this, ſee note on Middleton's evidence, p. 30.

liamſon, and objected to this hiſtorical evidence, and ſaid, that without meaning any reflection on the witneſs whom he knew, and believed to be a very good man, and an active officer; yet, in a queſtion of this kind, hearſay evidence was not admiſſible *. Upon this the proſecutors did not inſiſt on the further particulars of Mr Williamſon's ſearch in London; and he only added, that, after Mr Brodie was apprehended, and brought to London, he was ſent to take

* The further particulars of Mr Williamſon's ſearch for Mr Brodie are curious, and, having been favoured with them from Mr Williamſon himſelf, we here ſubjoin them.

On Monday the 10th of March, Mr Williamſon began his ſearch at Mr Brodie's dwelling-houſe, out houſes, &c. He ſearched ſeveral of Brodie's haunts in Edinburgh and Leith. He ſearched all the incloſed tombs in the Greyfriars Churchyard. The reaſon for this was, that, ſome years ago, Brodie aſſiſted one Hay, accuſed of a capital crime, in making his eſcape from the tolbooth of Edinburgh, and concealed him eight or ten days in one of theſe tombs, till the hue and cry was over. Hay by this means got off, and has never ſince been heard of.—When it was known, on Wedneſday, that Brodie had gone off to London on the Sunday morning of the 9th, Mr Williamſon was deſpatched after him. At Dunbar, he learned that Brodie had paſſed there about four o'clock in the afternoon of Sunday, and traced him to Newcaſtle, where he took the Flying Mercury light coach for York and London. From the coachman who drove the coach into London, he learned, that a man, anſwering Brodie's deſcription, had been ſet down at the end of Old Street, Moorfields, and did not proceed to the Bull and Mouth Inn, where the coach ſtops. Some perſons of Brodie's acquaintance were examined; and, from the declarations of ſome of them, there was reaſon to believe, that Brodie had gone to the Continent. Mr Williamſon went to Margate, Deal, and Dover, but got no intelligence of him.

On Mr Williamſon's return to London, he learnt from Sir Sampſon Wright's people, that Brodie had been ſeen about Bedfordbury. Mr Williamſon repaired to the billiard tables, hazard tables, cock-pit, tennis-court, &c. &c. As no houſe could be ſearched without making oath to his being there, Mr Williamſon left the management to Sir Sampſon's people, and returned, after eighteen days ſearch in London, to Edinburgh.

to take charge of him from Tothillfields, Bridewell, to Edinburgh *.

W I T. XXVI.

Andrew Ainſlie, ſome time ſhoemaker in Edinburgh.—To the examination of this witneſs the *Dean of Faculty* objected upon the different grounds: That he was a perſon who had himſelf been accuſed of the very crime charged in the Indictment: That he was to have been tried for it, and meaſures were taken for that purpoſe; but no ſooner was Mr Brodie diſcovered, and brought to this country, than this witneſs was prevailed upon to accuſe him as an accomplice in that crime. And upon this the Dean of Faculty ſaid, his unfortunate client was ſubſtituted in the place of the witneſs, who was reduced to the alternative of either fixing the crime upon Mr Brodie, or being tried, and perhaps hanged for it himſelf. Such being the circumſtances under which the witneſs came forward, the Dean of Faculty contended that he was altogether inadmiſſible.

The *Lord Advocate* anſwered, that he had no doubt in his own mind that the witneſs was an accomplice to the crime charged againſt the priſoner, and was to have been tried for it, if he had not been admitted evidence: That the law had authoriſed the admiſſion

* On the journey from London to Edinburgh, Mr Brodie was in good ſpirits, and told many things that had happened to him in Holland. He fell in with a Scots woman at Amſterdam, who aſked him if he had been long from Scotland. She ſaid, that there was one Brodie, a citizen of Edinburgh, accuſed of robbing the Exciſe Office, and a great reward was offered for apprehending him. She little knew who ſhe was ſpeaking to, ſaid Mr Brodie. At Amſterdam, he fell in with the man who had committed a forgery on the Bank of Scotland. He ſaid, he was a very ingenious fellow. If he had not been apprehended, he would have been maſter of the proceſs in a week.

admiſſion of the evidence of *ſocii criminis*, for a very obvious reaſon, and had left it to the public proſecutor to ſelect and determine which of the accomplices ought to be admitted; there was therefore no doubt with regard to the *admiſſibility* of the witneſs: But with regard to his *credibility*, that remained in the minds of the Jury; and although he the witneſs could not now be under any temptation whatever to affix the crime upon another, as he himſelf was beyond the reach of being affected by it, yet that he, as proſecutor, did not call upon the Gentlemen of the Jury to credit the evidence of this witneſs, farther than it ſhould be corroborated by the other unexceptionable parts of the proof.

The *Dean of Faculty* replied, that Ainſlie was not in the ſituation of a common *ſocius criminis:* That he had all along denied the acceſſion of Mr Brodie to the crime libelled; and it was not till Mr Brodie was on his way to, or arrived in Edinburgh, that the witneſs could be prevailed upon to ſay any thing whatever to criminate Mr Brodie: That very undue means had been practiſed upon him to become evidence in this cauſe; and he had nothing leſs at ſtake than his own life if he refuſed. The Dean ſaid, That he was in condition to prove the undue means practiſed upon the witneſs, if the Court would allow him to bring forward the proof.

The *Lord Advocate* ſaid, That the *Dean of Faculty* was miſinformed in ſaying that the witneſs had never accuſed Brodie till after he was apprehended, and on his way to Edinburgh; and referred to Ainſlie's ſecond declaration, emitted before the ſheriff on the 14th of March, a few days after Brodie's elopement, as evidence of the contrary: That, with regard to the undue means alledged to have been practiſed upon Ainſlie, to induce him to become evidence, he had never heard of it before, and could not believe it; but had no objection to the witneſs being examined upon that point.

The

The Court, after reaſoning upon the foreſaid debate, unanimouſly repelled the objection, upon the grounds, That, were accomplices to be diſqualified from being witneſſes, many very dangerous crimes would paſs undiſcovered, and unpuniſhed: That the admitting them, therefore, was founded in reaſon and good ſenſe, and conſiſtent with the uniform practice of the Court: That, although the law had fixed the *admiſſibility* of ſuch evidence, it had wiſely left the *credibility* of it to the jury; and they might believe, or reject it, according as their own conſciences ſhould dictate to them.

A minute of the above debate, and of the judgment of the Court thereon, being then ordered to be recorded, the witneſs was brought forward, and being ſworn in common form, the Lord Juſtice Clerk informed him, that the former declarations emitted by him, reſpecting the crime libelled, were now all deſtroyed; that nothing he had done, or could now ſay, reſpecting that matter, could ever militate againſt himſelf in any ſhape, as he had been admitted as a witneſs; and, therefore, conjured him to remember the ſolemn oath he had juſt taken, and to be recollected before he proceeded to anſwer the queſtions to be put to him. After this admonition,

Ainſlie then ſaid, That he was intimate with both the priſoners at the bar, and named and diſtinguiſhed them: That a plan had been framed between them, the witneſs and John Brown, *alias* Humphry Moore, to rob the General Exciſe Office: That, ſome time previous to carrying the ſaid plan into execution, the witneſs and Brown went out to Duddingſton, and drank a bottle of porter in a public houſe there: That they had a black dog * with them belonging to the priſoner, Smith: That they ſtole the coulter from a plough in a field near Duddingſton, (deſcribed the field): That they hid the coulter in Saliſbury rocks,

* Vide Note on Kinnear's evidence, page 26.

rocks, or crags: That, ſeveral nights previous to committing the robbery of the Exciſe, the witneſs watched at the office, to ſee what time the people left it; and that he diſcovered the doors were generally ſhut about eight o'clock, and that no perſon attended till ten, when a guard, or watchman, came: That they had fixed on Wedneſday, the 5th of March laſt, for committing the ſaid robbery; and, about the duſk of the evening, the witneſs and Brown went and brought the coulter of the plough from Saliſbury Crags to Smith's houſe, in order to be uſed in forcing open the Exciſe Office doors: That, when they came to Smith's houſe, he (Smith) was at home; and Brodie was expected to accompany them to the Exciſe Office: That he accordingly came; and they met altogether in an upper room in Smith's houſe: That Mr Brodie was dreſſed in black clothes*, (which he had often ſeen him in before,) and a cocked hat, and whitiſh great coat: That he had a piſtol, and was ſinging a *flaſh*, or highwayman's ſong: That it was ſettled that the witneſs ſhould go firſt, and obſerve when the Exciſe people left the office: That he accordingly went there a little before eight o'clock, and waited till he ſaw the porter come out with a light, and lock the outer door: That, immediately after this, Smith came to the witneſs, and aſked, If they were all gone? and being anſwered, That they were, he (Smith) went forward, and opened the outer door with a key made for the purpoſe, and went in: That he has heard Smith ſay, that he made the ſaid key: That, about five minutes after, Brodie came to the witneſs; and being told that Smith was gone in, he (Brodie) went up again towards the ſtreet, and returned immediately in company with Brown: That Brown ſaid he had been doging the porter home: That the witneſs then

* In the hurry of printing, this circumſtance, of Brodie being in black clothes, has been omitted in the depoſition of James Bonar, the 14th witneſs, page 25. Mr Bonar poſitively ſwore, that the man who run out from behind the outer door of the Exciſe was dreſſed in black.

handed the coulter to Brown through the rails; and then Brodie and Brown went in together after Smith: That it was ſettled, before leaving Smith's houſe, that Brodie was to ſtand behind the outer-door: That Smith and Brown were to break into the Caſhier's room; and that the witneſs was to watch on the outſide, and give the alarm in caſe of any danger: That the witneſs had no arms excepting a ſtick; but the other three had each of them loaded piſtols: That the ſignal of alarm agreed upon to be given by the witneſs, was a *ſingle* whiſtle if one man appeared, that they might ſecure him, and *three* whiſtles if two or more appeared, which was to be the ſignal of retreat, which thoſe within were to do by the back windows: That the witneſs got the ivory whiſtle, with which he was to give the ſignal, from Mr Brodie, before leaving Smith's houſe: That he took his ſtation within the rail, and leaned down, ſo that no perſon either going in, or coming out, could ſee him: That he had not been long there, when a man came running down the court; and, before the witneſs had time to think what he ſhould do, the man ran in to the Office: That, juſt as he went in, another man came running out at the door, and went up the court; and, immediately thereafter, another came out *; and the witneſs being afraid, from this circumſtance, that they were diſcovered, and that theſe men that had ſo come out, were gone to give the alarm, he immediately gave three whiſtles, as the agreed ſignal of retreat, and then went off: That he was upon this watch altogether about half an hour: That the witneſs went down St John's Street, thinking to meet his companions coming out by the back way, having eſcaped from the windows; but, not meeting with them, he went directly to Smith's houſe, and Mrs Smith told him, that they were not yet come there; upon which he went immediately back to the Exciſe Office by the ſtreet, ſaw the door open, and that all was quiet: That he returned again to Smith's, and found

* Vide note upon the evidence of James Bonar, p. 25.

found Smith and Brown there: That they accuſed the witneſs of not giving the alarm as he promiſed, and informed him, that Brodie had alſo deſerted his poſt: That, ſoon after this, the witneſs and Brown went over to the New Town, and got Daniel M'Lean, Mr Dryſdale's waiter, who went with them to one Fraſer's: That they were there till about two o'clock in the morning, and there was one Price in company: That he the witneſs did not ſee Mr Brodie that night again, after the robbery was committed *; but he (Brodie) called upon the witneſs and Brown next morning, at their room, and told them he had been with Smith, who had accuſed him of running away; and, on Brown ſaying the ſame thing, he, (Brodie) ſmiling, ſaid, that he thought he had ſtood very true.

That, when the witneſs received the ſaid whiſtle from Brodie in Smith's houſe, it was ſome time in the afternoon, and before they met altogether in the evening, and that Brodie was then dreſſed in light coloured clothes, and had afterwards changed them before they went to the Exciſe Office: That Smith, Brown, and the witneſs, had each of them a crape to diſguiſe their faces, but Mr Brodie had none: That the piſtols produced, and which were here ſhown to, and examined by the witneſs, were one of the pairs uſed that evening: That Smith had them, the witneſs having borrowed them about a month before from Mr Brodie, and given them to Smith: That the ſame evening, as the witneſs and Brown went to the New Town, Brown informed him, that they had got only L. 16 odds, in the Exciſe Office; and, on the Friday evening following, the witneſs called at Smith's, and got his 4th ſhare of the ſaid ſum: That at the time the money was ſo divided, Brodie and Smith were both preſent, and they, alſo, each got a 4th ſhare of it: That Brodie then paid the witneſs ſome money that he owed to him: That, of the money the witneſs

* Graham Campbell ſaid, they all came back to Smith's. Vide page 27.

witneſs received at this time, there was a L. 5 note, of which he gave in ſome change: That he afterwards gave the ſaid note to Smith, and ſaw him change it the ſame evening in Mr Dryſdale's, on taking out a ticket in the Mail Coach for his wife to Newcaſtle for next day *. And being aſked, If he had any particular mark by which he could know the ſaid note again? anſwered, That it was a Glaſgow note, and battered on the back with paper. And Mr Solicitor-General being here about to ſhow the witneſs the note libelled on, the *Dean of Faculty* objected, That the note libelled on, as deſcribed in the indictment, was ſaid to be a L. 5 *bank*-note: That the note alluded to by the witneſs, he had ſaid, was a Glaſgow note; and, as the indictment libelled on a *bank*-note, it was impoſſible that they could be the ſame, as the note of a private banking company could not, with propriety, be called a *bank*-note, nor any but thoſe iſſued by a public bank, conſtituted by Royal charter.

Mr Solicitor-General anſwered, That he ſaw no good reaſon for the diſtinction contended for by the Dean of Faculty, which was a mere quibble upon words, as the note of every banking company was called a *bank*-note; but he ſubmitted the matter to the Court, who ſuſtained the objection, and would not allow the note to be ſhown to the witneſs.

The

* This evening, Friday, Brown gave information, and Smith, Ainſlie, Mrs Smith, and Graham Campbell, were taken into cuſtody. The reaſon of Brown's giving the information is ſaid to have been, that he had ſeen the advertiſement from the Secretary of State's Office that evening, promiſing a reward and a pardon to the perſon who ſhould diſcover the robbery of Inglis and Horner's ſhop. Brown was under ſentence of tranſportation in England, and in daily fear of apprehenſion. The reward and pardon were too powerful to be reſiſted; and he foreſaw, that it would be neceſſary for the proſecutor to obtain his pardon for his offence in England, before he could be admitted as a witneſs. No wonder that the Lord Juſtice Clerk ſaid to him, after his examination, that he was a clever fellow.

The witneſs being then ſhown the coulter and iron crow libelled on, ſaid they were the ſame uſed at opening the Exciſe Office: That they called the coulter *Great Samuel*, and the iron-crow *Little Samuel.*

On croſs examination,—The witneſs ſaid, that at the time they went to commit the robbery on the Exciſe, he left Smith's houſe about a quarter before eight o'clock: That he went away before the reſt: That Brodie came to the Exciſe juſt about eight: That they were abſent altogether about an hour: That the reaſon they choſe Wedneſday evening for the robbery was, that the old man had to watch that night; and they choſe the hours from eight to ten o'clock, becauſe there was no watch at that time: That he does not remember who it was that firſt propoſed robbing the Exciſe.

W I T. XXVII.

John Brown, alias *Humphry Moore*, reſidenter in Edinburgh.—The ſame objection was ſtated by the *Dean of Faculty* to the admiſſibility of this witneſs that had been ſtated againſt Ainſlie, the preceding witneſs; with this addition, that, beſides being an admitted accomplice in the robbery charged in the Indictment, he had been accuſed and convicted of a former felony by the judgment of a proper Court, who had pronounced ſentence of tranſportation againſt him; ſo that he was not only *infamia facti*, but *infamia juris*, which, at the ſame time that it deſtroyed his credibility, totally diſqualified him from being a witneſs at all, even in a civil cauſe, and much leſs therefore could he be a witneſs in a criminal one, where his evidence might affect the lives of unfortunate individuals.

The *Lord Advocate* anſwered, That the objection made to Ainſlie by no means applied to this witneſs, as he was the perſon who firſt made the diſcovery: That he had done it voluntarily, and there-

fore was entitled in juſtice, and according to practice, to be admitted evidence; and that, at any rate, the Court had already removed the firſt part of the objection, by determining the admiſſibility of Ainſlie: That with regard to the felony which the witneſs had committed in England, he had received his Majeſty's pardon for it; which was produced and here read, and which, his Lordſhip contended, reſtored the witneſs to his full credit and capacity. His Lordſhip exemplified this doctrine by a variety of authorities from Engliſh law books of the higheſt character, and read the paſſages in Court. That, if the witneſs was, by the pardon reſtored to credibility in England, where the crime was committed, it was abſurd to ſay that he was inadmiſſible or infamous in Scotland, where the crime was not committed. So far was this from being the caſe, that his Lordſhip contended, that no pardon was neceſſary to entitle the witneſs to bear evidence in this country: That the crime from which the infamy was inferred, was committed in England, which, legally ſpeaking, was a foreign country, and the ſentence of their Courts had no effect *extra territorium*; and nothing could render a perſon infamous in this country, or diſqualify him from being a witneſs, but the ſentence of a ſupreme Court in Scotland.

Mr Wight, for the priſoners, replied, That the pardon ſecured the witneſs from puniſhment, but by no means reſtored his credibility. The objection, however, was not confined to the infamy annexed to the crime mentioned in the pardon alone; for he held in his hand an extract of another ſentence of infamy againſt Brown of the Juſtices of Peace for the county of Stirling, proceeding upon his own confeſſion of theft, and by which he is baniſhed that county, under certain certifications, for which crime the witneſs had received no pardon. He alſo mentioned that a bill had been found againſt Brown by a Grand Jury in England for a ſeparate felony from that for which he had been pardoned.

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The *Lord Advocate* ſaid, He had never heard of either of theſe facts; but, although true, they did not amount to a diſqualification of the witneſs; for it was a fixed point in law, that the ſentence of an inferior court, eſpecially without a proof and without a Jury, had not that effect; much leſs could the finding of a bill by a Grand Jury in England, of which there was no evidence; and, at any rate, it was no more than an unſubſtantiated accuſation, which would go for nothing.

The *Dean of Faculty* ſaid, That the King had no doubt a right to remit the puniſhment of any offence againſt the law; but it appeared to him a moſt extraordinary doctrine, that the King's pardon reſtored the *credibility* of the perſon pardoned. He had heard that the King could create a *Nobleman*, but that he could not make a *Gentleman*, much leſs could he make a hardened villain an honeſt man. The King had no ſuch prerogative; nay, ſuch a converſion was eſteemed a *miracle* in the King of Kings! The pardon could not alter the *nature* of the criminal—" as well might the "Ethiopian change his ſkin, or the Leopard his ſpots:" To ſay, therefore, that a piece of parchment, with a ſeal dangling at it, or a man being on this or the other ſide of the Tweed, made him an honeſter or a better man, or more worthy of credit than he would otherways have been, was a propoſition ſo abſurd and ſelf-deſtructive, that it could not be impoſed upon the meaneſt capacity, and was more hoſtile to reaſon and common ſenſe, than the moſt abſurd ſophiſtries of the Church of Rome.

The Judges then ſeverally delivered their opinions on the contended point at conſiderable length. They agreed, in general, that the queſtion was new, and of importance: That, had the conviction of the witneſs proceeded upon a trial by jury in Scotland, they would have been for ſuſtaining the objection; but, as the conviction and ſentence

were

were from *England*, and as it appeared, from the law authorities read by the Lord Advocate, that one of the effects of a pardon, in that country, was the reſtoring the criminal pardoned to the ſtate and character that he held previous to the conviction, that that ſentence and pardon, on coming to this country, muſt bring their character, their conſtruction or meaning, and their effect along with them. *Lord Swinton*, in particular, quoted ſeveral texts from the civil law, purporting, that a remiſſion, ſo far from reſtoring, blemiſhed the reputation of him whom it relieved from puniſhment: That our Municipal law was explicit to the ſame effect. The ſtatutes of Robert I. among others, debarred *convicts redeemed from juſtice* from being evidence; and that this act was expreſsly quoted and laid down as law by Sir George Mackenzie, who was at leaſt our moſt ancient author upon the criminal law, and there was no practice or deciſion to the contrary. This, however, did not appear to be the law of England; and to prove this, his Lordſhip, in addition to the authorities referred to by the Lord Advocate, quoted a paſſage from *Mr Juſtice Buller*'s Treatiſe on Trials, a book of the greateſt authority, which laid down, "That if a perſon, found guilty on an indictment for "perjury at common law, be pardoned by the King, *he will be a* "*good witneſs, becauſe the King has power to take off every part of* "*the puniſhment.*" That, as to the ſentence of the Juſtices of Peace of Stirlingſhire againſt the witneſs, no ſtreſs could be laid on it, as it was now a ſettled point, that no ſentence of an inferior court, proceeding without the verdict of a jury, was ſufficient to ſet aſide any perſon from being a witneſs.

Their Lordſhips repelled the objection to the witneſs's *admiſſibility*, and allowed the examination to proceed; reſerving his *credibility* to the conſciences and good ſenſe of the jury.

The

The witneſs, *John Brown*, alias *Humphry Moore*, being then called in, he received an exhortation from the Lord Juſtice Clerk, ſimilar to that given to Ainſlie; and being examined, deponed,

That he knew and was intimate with both the priſoners, and identified them at the bar: That the preceding witneſs (Ainſlie) was often of their parties: That he had frequently met Brodie at Smith's, and other places: That he had occaſion to know the particulars reſpecting the robbing of the Exciſe Office, as it was preconcerted between the priſoners, the witneſs, and Ainſlie, as far back as the 30th of November laſt, the night on which the Free Maſons make a public proceſſion: That, on that evening, the 30th of November, they went and opened the outer door of the Exciſe Office with a falſe key, and left it unlocked, as the key would not lock it again: That this was done by way of experiment; and they went no farther than juſt within the outer door. The witneſs concurred with Ainſlie in every particular reſpecting their going to Duddingſton, having Smith's black dog with them, drinking the porter, ſtealing the coulter from the plough in the field, ſecreting it in Saliſbury Crags, and taking it from thence in the duſk of the evening of the day of the robbery, and bringing it to Smith's houſe: That they had an appointment there that evening at ſeven o'clock, and expected Brodie there at that hour, but he did not come till near eight: That the purpoſe of their meeting was to go and rob the Exciſe: That they met in an upper room in Smith's houſe, and had ſome herrings, chicken, gin, and *black cork*; which laſt he explained to be Bell's beer: That he had ſeen Brodie that afternoon, when he was dreſſed in light coloured clothes; but, when he came to the ſaid meeting, he was dreſſed in black: That, when Brodie came into the room at Smith's, he took a piſtol from his pocket, and repeated ſome words of a ſong, as he ſaid, of Macheath's, about *turning their lead into*

gold :* That he (Mr Brodie) brought ſome ſmall keys with him, and a double picklock, which picklock is the ſame then ſhown to the witneſs: That it was agreed that Ainſlie ſhould remain on the outſide, within the rails, with a whiſtle, to give the alarm in caſe of danger, and Brodie was to be ſtationed within the outer-door for the ſame purpoſe, and that the witneſs and Smith were to go into the Caſhier's room: That they accordingly went by detached diviſions, Ainſlie firſt: That the witneſs and Smith had crape to diſguiſe their faces, and Smith had a wig, but did not remember that Brodie had any crape: That, when the witneſs went there, the porter was coming out, and he dogged him home; and his reaſon for this was, to ſee that he had not gone on an errand and to return: That, on the witneſs's return to the Exciſe Office, he met Brodie, who told him that Smith was in the inſide, and deſired him to go in, which he did: That, as he paſſed, he ſaw Ainſlie at his poſt, and received from him the coulter, or *great Samuel*; and that he found the door open, and Smith in the inſide, in the hall: That the outer-door of the Caſhier's room was opened by Smith with a pair of curling irons, and the witneſs aſſiſted him in *prizing* open the inner-door with the coulter and iron crow: That Smith carried the dark lanthorn; and, on getting in, they opened every preſs and deſk in the room, either by violence, or by keys which they found there: That they remained about half an hour; that they heard ſome noiſe, and cocked their piſtols, which were loaded with powder and ball: That, when they went out, they did not ſee Brodie or

* The witneſs ſeemed to be well acquainted with Macheath, but not with the Beggar's Opera.—The ſong is by Matt of the Mint.

Let us take the road. §
Hark! I hear the ſound of coaches! §
The hour of attack approaches, §
To your arms brave boys, and load. §
See the ball I hold.
Let the chemiſts toil like aſſes,
Our fire their fire ſurpaſſes,
And turns all our lead to gold.

or Ainſlie, and found they were both gone: That they found in a deſk in the Caſhier's room L. 16 odd money, which they carried away with them: That it conſiſted of two five pound notes, ſix guinea notes, and ſome ſilver: That, on coming out, they croſſed over the ſtreet, went down Young's ſtreet, and then to Smith's houſe by different ways: That the witneſs heard no whiſtle while in the office: That they left the Exciſe door unlocked, but carried the key with them: And being ſhown the key, and alſo the coulter, iron crow, wedges, curling-irons, and dark lanthorn, he identified them to be the ſame that were uſed on that occaſion: That the witneſs, Smith, and Brodie, had each a pair of piſtols loaded: And being ſhown the pair of piſtols libelled on, he ſaid they were the pair that Smith had at the Exciſe: That, ſoon after their arrival at Smith's, Ainſlie came in, and the witneſs propoſed that they, meaning himſelf and Ainſlie, ſhould go over to the New Town, to prevent ſuſpicion, which they did:—Concurred with Ainſlie as to what paſſed there, not only on that night, but the Friday evening following, reſpecting their being in Fraſer's, purchaſing the ticket to Newcaſtle, changing the five pound note, &c.: That, on the Friday evening after the robbery, the witneſs was ſent for to Smith's: That Brodie, Smith, and Ainſlie, were there; and he at that time received from Brodie L. 4, ſome odd ſhillings, as his fourth ſhare of the money taken from the Exciſe: That the ſame evening the witneſs made a diſcovery of the robbery of the Exciſe to the Procurator Fiſcal, but did not at that time mention any thing of Brodie's concern in it *: That, next day, the witneſs was ſent to England, to trace ſome goods taken from Inglis and Horner's ſhop, and, on his return, was informed that Smith had emitted a declaration, informing of Brodie's guilt; in conſequence of which he (Brodie) had abſconded.

On

* Vide Note, page 40.

On croſs examination by Mr Brodie's Counſel, the witneſs ſaid, that he had on a great coat that night belonging to Michael Henderſon: That as he was going down to the Exciſe Office the clock ſtruck eight: That he was again at Smith's houſe at nine. Being aſked, if Brodie was preſent when the piſtols were loaded? he ſaid he was: That Brodie came to Smith's that day in coloured clothes, with piſtols, between dinner and tea. Being aſked, If that might be four o'clock? he anſwered, He could not tell what the clock was. Was it after three o'clock that afternoon? He was not certain. Was it after two? yes, he was certain it was *: That they eat ſome herrings in Smith's before going to the Exciſe: That he was certain as to the ſmall piſtols that Mr Brodie carried in his breeches pocket. Being aſked, How he knew the key now produced to be the ſame that was uſed in opening the Exciſe Office? he ſaid, He knew it very well; for there was not a key in five hundred like it; and he defied the Dean of Faculty to ſhow him ſuch another.—Here the witneſs was rather warm, and ſaid, of himſelf, that, in giving this evidence, he had ſaid nothing but truth, and he had rather ſoftened the matter than otherwiſe with regard to Mr Brodie. Upon his retiring, the Lord Juſtice Clerk ſaid to him, "Brown, you ſeem "to be a clever fellow, and I hope you will now abandon your diſ-"ſipated courſes, and follow ſome honeſt employment."

Brown anſwered,—"My Lord, be aſſured my future conduct "ſhall make amends for my paſt."

The

* Vide Note on Matthew Sheriff's exculpatory evidence.

The parole evidence for the Crown being here closed, the Clerk of the Court, at the desire of the Counsel for the prosecution, proceeded to read the several declarations of Smith, and the letters and declaration of Brodie, all mentioned in the Indictment, of which full and correct copies are subjoined; excepting the parts of Smith's second declaration, which are marked with asterisks, which were omitted, at the special request of Mr Brodie's Counsel, as they had no relation to the crime libelled. This the Lord Advocate obligingly agreed to; although he said he had a right to have the whole read to the Jury.

COPIES OF THE DECLARATIONS

OF

GEORGE SMITH, Grocer in Edinburgh,

Taken before ARCHIBALD COCKBURN, *Esq; Sheriff-depute of the County of Edinburgh.*

FIRST DECLARATION, taken upon the 8th March 1788.

DECLARES, That it is about a year and a half ſince the deponent came to Scotland: That he was never in it before: That he was born at Boxford, within four miles of Newburgh, Berkſhire: That the declarant and his wife travelled the country of England as hawkers, with a horſe and cart: That he brought a horſe to this country, but no cart: That when he firſt came to Edinburgh he put up at Michael Henderſon's, having heard his houſe mentioned by travellers in England as a travellers inn: That he was taken ill after his arrival in this country, and confined for about four months in Michael Henderſon's, which obliged him to ſend for his wife to this place: That he ſent for goods from England, which he ſold, as alſo his horſe, in order to ſupport himſelf: That ſince he came to this country

country he has frequented *Clark's* in the Fleſhmarket cloſe, which is a gambling-houſe, and in which houſe he was in uſe to meet a variety of people, and, among the reſt, Andrew Ainſlie, and John Brown: That the declarant firſt got acquainted with Ainſlie and Brown in Michael Henderſon's: That Ainſlie gave himſelf out for a ſhoemaker; but the declarant cannot tell of what profeſſion Brown is: That the CLUB, as it was called, at *Clark's*, as the declarant believes, has been doing *little* theſe three months paſt: That the declarant never played there to go very deep, and was never ſeen to win or loſe above thirty ſhillings, having never taken more than that ſum in his pocket alongſt with him; but, upon recollection, thinks that he has won above thirty ſhillings: That the declarant inclines to believe, that John Brown has rather been unfortunate at the Club. Declares and acknowledges, That the declarant took a cellar in Stevenlaw's cloſe, from a woman, whom he now ſees in the office: That the declarant afterwards took Ainſlie to the ſaid woman, and told her that this was the gentleman who was to poſſeſs the cellar; but he does not remember of calling him by the name of Campbell, or any other name: That the declarant gave the rent, which was ten ſhillings, to Ainſlie, who gave it to the woman. Declares, That the declarant went with Ainſlie to Mrs Clark's houſe in George's-Square, where Ainſlie took a ſtable from that lady; but the declarant and Ainſlie remained in the kitchen, and neither of them ſaw Mrs Clark, as he thinks: That the declarant does not recollect for what purpoſe Ainſlie ſaid it was he wanted to rent the ſtable: That the declarant ſaw Ainſlie pay five ſhillings, or ſome ſuch ſum, as a month's rent for the ſtable per advance. And being interrogate, What was the purpoſe of the vice which ſtands in the cellar of his houſe? declares, That he has had that for ſeven or eight years, and that he uſed it for putting tongues into buckles, or any thing of that ſort; but he has not uſed it ſince he came to his preſent houſe: That his wife intended to have ſet out this day on a viſit to her re-

lations

lations in England; and for that purpoſe the declarant took out for her a ticket in the mail coach at Dryſdale's, where he changed a five pound bank-note, and paid for it. Declares, That the black dog now in the office belongs to a neighbour of his; but from the declarant's giving him now and then ſome bones to pick, he frequents the declarant's houſe, and follows him and his wife: That the note he changed at Dryſdale's, the declarant has had in his poſſeſſion for above two months paſt: That he got it from a ſmuggler, and it was battered then as it now is.

THE SECOND DECLARATION

OF

GEORGE SMITH,

Taken at Edinburgh upon the 10*th day of March* 1788.

Compeared, in preſence of the Sheriff, George Smith, formerly examined on Saturday the eight current, after having ſent notice to the Sheriff, that he wiſhed to ſpeak with him. Came to the Office, and told the Sheriff, that he wiſhed to have an opportunity of making a clean breaſt, and telling the truth; upon which the Sheriff informed him, That, as he, the Sheriff, knew he ſtood in a very tickliſh ſituation, it was his duty to let him know, that, whatever he told or diſcovered, was not to be accepted of under any condition or promiſe whatever, or that his doing ſo would operate any thing in his favour, and that therefore he was at perfect freedom either to ſpeak out or hold his tongue, as he judged beſt. And the ſaid George Smith

Smith having declared that he wiſhed to tell the truth, and communicate all the guilty ſcenes in which he had been concerned for ſome time paſt, ſince he came to the town of Edinburgh, he was deſired to proceed. Declares, That, in the end of October, or beginning of November laſt, the declarant, in company with Andrew Ainſlie and John Brown, whoſe real name is Humphry Moore, went to the College of Edinburgh, about one o'clock in the morning. Having got acceſs at the under gate, they opened the under door leading to the Library with a falſe key, which broke in the lock; and thereafter they broke open the door of the Library with an iron crow, and carried away the College mace. Declares, That the declarant has, almoſt ſince his firſt arrival in Edinburgh, been acquainted with Deacon William Brodie; and he ſaw him firſt at Michael Henderſon's, where he was introduced to the declarant by one ******, at the time the declarant was confined in that houſe: That Brodie, in the courſe of converſation, ſuggeſted to the declarant, that ſeveral things could be *done* in this place, if prudently managed, to great advantage, and propoſed to the declarant that they ſhould lay their heads together for that purpoſe: That, in conſequence of this concert, the declarant and Brodie were in uſe to go about together, in order to find out the proper places where *buſineſs* could be *done* with ſucceſs: That * * * * *

* * * * * * * * * *

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Declares, That, on Wedneſday evening, the fifth inſtant, the declarant, along with William Brodie, John Brown, and Andrew Ainſlie, between the hours of eight and ten o'clock at night, broke into the Exciſe Office, and carried off from that about ſixteen pounds, conſiſting of two five pound notes, four guinea notes, one twenty

ſhilling note, and about ſeventeen ſhillings and ſixpence in ſilver: That this money was divided among them, and Brodie received his ſhare: That Brodie firſt planned the Exciſe Office, and repeatedly carried the declarant there, under pretence of calling for Mr Corbett from Stirling, and other people, in order to learn the ſituation of the place; and, on one of theſe occaſions, the declarant obſerved the key of the outer door hang upon a nail near by it. Down he clapped ſome potty upon it, and carried away the wards: That Brodie took a drawing of the wards of the key, which the declarant thinks he has in his poſſeſſion: That Brodie told the declarant how to get into the caſhier's deſk, and where the money lay, which was in two places; and in each of theſe places ſome money was found: That Brodie came to the knowledge of theſe circumſtances, by being preſent when Mr Corbett from Stirling, who is a connection of Brodie's, drew money at the caſhier's office: That, when they broke into the Exciſe Office, the outer door was opened by a key, which the declarant had filed from the pattern before mentioned: That the plan of accompliſhing this buſineſs was as follows: Ainſlie was to keep on the outſide of the Office, hanging over the paliſadoes, in the entry, with a whiſtle of ivory, which was purchaſed by Brodie the night before, with which, if the man belonging to the Exciſe came, he was to give one whiſtle, and if any ſerious alarm was perceived, he was to give three whiſtles, and then make the beſt of his way to the Exciſe gardens in the Canongate, in order to aſſiſt the declarant, Brodie, and Brown, to get out at the back window of the hall, it being determined, in caſe of ſurpriſe, to bolt the outer door on the inſide, and make the beſt of their way by the window: That Ainſlie was armed only with a ſtick, which he left ſomewhere in the court, and which ſtick was purchaſed by the declarant: That Brodie had a brace of piſtols, the declarant a brace and a half, and Brown a brace, which the declarant borrowed from Michael Henderſon: That theſe arms were all loaded with double balls, as they were

were determined not to be taken, whatever ſhould be the conſequence: That the declarant and Brown were told afterwards by Brodie and Ainſlie, that a perſon had come running down the court, and gone in at the outer-door, and upſtairs: That, upon this, Ainſlie had given the alarm by a whiſtle, as was agreed upon, and made the beſt of his way; but none of them in the inſide heard the whiſtle, at leaſt neither Brown nor the declarant did, and Brodie ſaid he did not: That, when the door opened, Brodie was ſtanding behind it; and, upon the perſon's running up-ſtairs, Brodie made off: That the declarant and Brown, when in the caſhier's room, heard the outer-door open; but, truſting to Brodie's being at the door, and ſtaunch, they did not mind it: That the declarant and Brown, when coming out of the caſhier's office, heard a perſon coming haſtily down ſtairs, which made them ſtop, or they muſt have met him: That, upon this, the declarant ſaid to Brown, *Here muſt be treachery, get out your piſtols, and cock them*, which they did accordingly: That, upon coming to the outer-door, they found it ſhut, the declarant and Brown having ſeen the perſon that came down ſtairs ſmaſh the door after him when he went away: That the declarant and Brown went down into Young's-ſtreet, where Brown gave the declarant a ſmall crow, with ſome wedges, and a ſhirt; alſo a large chiſſel: That the chiſſel and ſhirt were given to Brodie afterwards, with the bank-notes, the declarant's dark lanthorn, and two bottles, which they had carried from the Exciſe Office, and took for wine: That the key with which the outer-door was opened, the crow, a pair of curling irons, with which the outer-door of the caſhier's room was opened, were all hid by the declarant in a wall between the Earthen Mound and the North Bridge: That, in virtue of repeated obſervations, it was diſcovered that two men watched the Exciſe Office, time about; and Ainſlie and Brown found out, that, from eight to ten o'clock at night, there was commonly no man in the

Exciſe

Exciſe Office, which was the reaſon of the thing being done at that time: That it was concerted by Brodie, in caſe of interruptions by the man coming into the Office before the buſineſs was compleated, to conceal themſelves quietly untill he was gone to reſt, and then to ſecure him; and they were, if this happened, to perſonate ſmugglers, who came in ſearch of their property that had been ſeized; and the declarant had a wig of Brodie's father's in his pocket, in order to diſguiſe himſelf: That the wig and ſcarf, and ſmall wedges, were left in the ſecond arch from the ſouth of the North Bridge: That the ſcarf was within the wig: That Brodie, after having been in the Exciſe, where he had on black cloaths, went home and changed them to his ordinary dreſs, of a marble colour, and a round hat: That Brodie told the declarant, that his ſiſter had remarked him changing his dreſs in ſuch a hurry. * * *

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Declares, That Brodie brought with him to the declarant's houſe, a day before, as he thinks, the Exciſe was robbed, a coil of ropes, new, which he either had in his poſſeſſion, or muſt have bought; as alſo a ſtrong chiſſel with a braſs virral, and two pieces of wax taper: That the braſs chiſſel is, as the declarant believes, now in Brodie's ſhop or houſe: That the coulter with which the inner-door of the Exciſe Office was broke open, and two iron wedges, were taken from a plough, by Brown and Ainſlie, near to Duddingſton, as they ſaid, the Friday before; and the declarant makes no doubt that a black dog, Rodney, might be with them, which uſed to follow the declarant and them: That the coulter and wedges were left in the Caſhier's Office, and were concealed in the Saliſbury Craigs from the time the coulter was taken away, to the time the Exciſe Office was broke. This he

declares

declares to be truth. And further declares, That the ropes brought by Brodie, as before mentioned, are in the declarant's houſe; as alſo a vice and files, and a ſpring-ſaw, with which the declarant uſed to make and alter keys: That the ſaw the deponent got from Brodie about five or ſix months ago: That the declarant, before this, bought a ſaw, with a pair of large pincers, at a hardware ſhop below Peter Forreſter's, on the high ſtreet; and the declarant inclines to think that Brodie bought his ſaw at the ſame place: That in the declarant's drawer, along with the ſaid ſaw and files, there will alſo be found a key-hole ſaw, which was bought and given to the declarant by Brodie. Declares, That the declaration emitted by him on Saturday laſt, ſo far as inconſiſtent with the preſent, is not true.

THIRD DECLARATION

OF

GEORGE SMITH,

Taken at Edinburgh, the 19th day of March 1788.

Declares, That the ſmall crow, the falſe key, and the curling tongs, now ſhown to him, are the ſame that were found by the declarant, William Middleton, A. Williamſon, and J. Murray, in an old dyke, on the ſixteenth inſtant; and the label annexed to them is ſigned by the declarant, as relative hereto, of this date. Declares, That the ſaid crow was carried to the Exciſe Office for the purpoſe

of opening the deſks in the caſhier's room: That the ſaid falſe key is the one that opened the outer door of the Exciſe; and the curling tongs were ſquared at the point by the declarant, and taken to the Exciſe for the purpoſe of opening the ſpring-catch of the outer-door of the caſhier's room, which it did. And being ſhown a coulter and two wedges, declares, That he believes they are the ſame that were uſed in the forcing open the inner door of the caſhier's room in the Exciſe, and were left there. And being alſo ſhown a ſpur, with the upper leather at it, declares, That it belonged to William Brodie; and the declarant tore the end of the leather, in order that it might appear, when found, to have dropped from the foot, by its being torn by accident by the buckle: That Brodie brought the ſaid ſpur to the declarant's houſe, and from thence it was taken to the Exciſe Office, on purpoſe that it might be left there, to make it believed it had been done by ſome perſon on horſeback: That the ſpur was left in the Exciſe Office by John Brown, as the declarant was told by him, upon the declarant's queſtioning him if he had done it; and the label annexed to the ſpur is ſigned by the declarant, as relative hereto, of this date. And being ſhown a parcel of ropes which the declarant is now told were found in his houſe, declares, That the declarant has no doubt but that they are the ſame ropes which were brought to the declarant's houſe by Brodie, and, after being knotted into a ladder, were carried to the Exciſe by the declarant, brought from thence by him, and unknotted again in the declarant's houſe, in which caſe he now ſees they are. And being ſhown a picklock, which the declarant is informed was found in William Brodie's counting-room in the ſhop, declares, That it is the ſame which William Brodie gave to the declarant in his own houſe before they went to the Exciſe, and which Brodie wanted to faſten with ſome nails, as the handle of it went round when the picklock was much preſſed. Declares, That the declarant carried that picklock to the Exciſe Office, and, after they had left it, it was returned by

the

the declarant to Brodie, when under the arch of the North Bridge, where Brodie's father's wig, the ſcarf, and wedges, were left, as mentioned in the declaration of the tenth inſtant; and the label affixed to the ſaid picklock is ſigned by the declarant, as relative hereto, of this date. And being ſhown a black caſe, with a lid to it, the caſe full of potty, declares, That it was found, as the declarant thinks, in Mr Brodie's drawers, by the declarant and George Williamſon, on Monday the tenth inſtant: That the declarant had often ſeen the ſaid caſe, with potty in it, before, in Brodie's poſſeſſion, when in the declarant's houſe; and the declarant approved of Brodie's keeping the potty in a caſe, as the lid prevented an impreſſion of a key when taken, from being defaced; and the ſaid caſe and potty having now a label annexed to it, the ſame is ſigned by the declarant as relative hereto, of this date. And being ſhown a five pound note, declares it is the ſame five pound note which the declarant carried to Dryſdale's, and changed there, to purchaſe his wife a ticket in the Newcaſtle ſtage: That the declarant believes it to be one of the five pound notes taken from the Exciſe, they being both of the Glaſgow Bank; but the other five pound note was not ornamented with the ſame colour with the one now ſhown to him: That the notes were paſted on the back by Brodie; and the one now produced is ſigned by the declarant on the back as relative hereto, of this date. And being ſhown a parcel of keys, declares, That they are the ſame which were pointed out by the declarant concealed in Saliſbury Crags on the ſixteenth inſtant, to William Middleton, Alexander Williamſon, and James Murray; and the label annexed to them is ſigned by the declarant as relative hereto, of this date. Declares, That *

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* * * And being ſhown a parcel of keys which were found by the declarant and George Williamſon upon the 10th current, declares, That the double clank

clank among the ſaid parcel was brought by the declarant from Sheffield, and given to Brodie; the reaſon of which was for fear it ſhould be found in the declarant's poſſeſſion, and thereby create ſuſpicion; but it was not likely to be diſcovered in Brodie's. Declares, That the head and ſtalks of two keys in the ſaid parcel were cut from old keys by Brodie, and were intended to be finiſhed for the purpoſe of opening the ſpring latch of the outer-door of the Caſhier's room in the Exciſe Office: That

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FOURTH DECLARATION

OF

GEORGE SMITH,

Taken before the Sheriff, at Edinburgh, the 17th July 1787.

Declares, That, on the 10th of March laſt, the declarant was carried to Mr Brodie's yard and work-ſhop, by Alexander and George Williamſons, in order to point out a place where it was ſuppoſed ſome falſe keys, which Mr Brodie had, were hid: That in the under work-ſhop, and in the bottom of a vent which was uſed as a fire-place for melting the glue, the declarant, when digging for the falſe key, found, a little under ground, a pair of piſtols, wrapped in a piece of green cloth, which the ſaid Alexander and George Williamſons took into cuſtody, and lodged in the Sheriff-clerk's Office: That the declarant ſaw the ſaid piſtols and piece of green cloth yeſterday, in the Sheriff-clerk's Office, and knew them to be the ſame that were found as above; and the reaſon of the declarant's knowing them was, that he had theſe piſtols in loan from Mr Brodie for a conſiderable time; and the declarant had the ſaid piſtols with him when the Exciſe Office was broke into on the evening of the fifth of March laſt. Declares, That the ſame evening, after breaking into the Exciſe Office, the declarant delivered the piſtols to Mr Brodie, being afraid of taking them to the declarant's houſe in caſe of a ſearch. This, &c.

COPY *of a* LETTER *from* William Brodie, *under the name of* John Dixon, *to Mr* Matthew Sheriff, *Upholſterer in Edinburgh.*

Fluſhing, Tueſday 8th April, 1788, 12 *o'clock forenoon.*

My dear Friend,

Sunday the 23d *ult.* I went on board a ſhip cleared out for Leith, but, by a private bargain with the Captain, was to be landed at Oſtend. I have been on board ever ſince the 23d. Moſt of the time we lay aground a little below Graveſend, owing to thick weather and croſs wind. We are obliged to land here; but this afternoon I will off, by water, for Bruges, and then for Oſtend, (ſo I begin my travels where moſt gentlemen leaves them off,) where I ſhall remain, for ſome time at leaſt, until I hear from Mr Walker; and, indeed I will require three weeks to recruit; for I have ſuffered more from my ſore throat than ſufficient to depreſs the ſpirits of moſt men. There was for twenty days I did not eat ten ounces of ſolid meat; but thank God I am now in a fair way. My ſtock is ſeven guineas; but by I reach to Oſtend will be reduced to leſs than ſix. My wardrobe is all on my back, excepting two check ſhirts and two white ones, one of them an old rag I had from my couſin ******, with an old hat (which I left behind), my coat an old blue one, out at the arms and elbows, I alſo had from him, with an old ſtriped waiſtcoat,

and

and a pair of good boots. Perhaps my couſin judged right, that old things were beſt for my purpoſe. However, no reflections: He is my couſin, and a good prudent lad, and ſhowed great anxiety for my ſafety; rather too anxious, for he would not let me take my black coat with me, nor Mr *****'s great coat, which makes me the worſe off at preſent;—but I could not extract one guinea from him, although he owes me twenty-four pounds for three years paſt. He turned me over to Mr Walker, who ſupplied me with twelve guineas. He is a gentleman I owe much to. I wiſh I may ever have it in my power to ſhow my gratitude to him and Mr *****. Had ****** been in my place, and me in his, my purſe, my credit, and my wardrobe, my all, ſhould have been at his diſpoſal. However, let not this go farther, leſt it ſhould have an appearance of reflection upon a worthy man. He cannot help his natural temper.

I would have wrote to Mr *****; but, for certain reaſons, I believe it is not proper at preſent. Pleaſe to communicate this to him: And I beg that every thing may be ſent to me that you, Mr *****, and my ſiſters, may think uſeful to me, either in wearing apparel, tools, or even a ſmall aſſortment of braſs and iron work. Pleaſe ſend my quadrant and ſpirit level: They lie in a triangular box in my old bed-room. My braſs caſed meaſuring line, and three foot rule, my ſilver ſtock buckle, it is in the locker of my cheſt, and my ſtocks; they will ſave my neckcloths. If my ſiſter pleaſes to ſend me ſome hand towels, they will be ſerviceable to me, whether I keep houſe or a room.

I moſt earneſtly beg of Mr ***** that my remittances be as liberal as poſſible; for without money I can make but a poor ſhift;—for, you muſt think, my days for hard labour is near expiring, although, with my conſtitution, I may be able to carry on buſineſs for many years, and perhaps with ſucceſs.

I have not yet received the trunk with my ſhirts and ſtockings, but will write Mr Walker to forward it to Oſtend, where I will be under the neceſſity of buying ſome things. And I hope by the time I come to New York I will have ſome things waiting me there. Whether it is beſt to ſend them by the Clyde or Thames, you and Mr ***** will judge beſt. And I hope to have a long letter from each of you, and one from my ſiſter *****; and your's will include your wife's: They may be put in with my things, and any other letters my friends are pleaſed to ſend. Direct for Mr John Dixon, to the care of the Rev. Mr Maſon, at New York. I am not ſure of ſettling there; but will make for it as ſoon as I can.

I have no more time, the boat juſt going off for Bruges or Oſtend.

I am,
Dear Sir,

Your's for ever,

(Signed) *John Dixon.*

Wrote on the back thus:

Let my name and deſtination be a profound ſecret, for fear of bad conſequences.

COPIES

COPIES OF TWO LETTERS

Upon One Sheet of Paper, from William Brodie *to* Michael Henderſon.

Dear Micheal, *Thurſday, 10th April* 1788.

I embrace this opportunity of writing you, and I make no doubt but it will give you, Mrs Henderſon, and a few others, ſatisfaction to hear that I am well.

Were I to write you all that has happened to me, and the hair-breadth eſcapes I made, from a well-ſcented pack of blood-hounds, it would make a ſmall volume.

I left Edinburgh Sunday the 9th, and arrived in London Wedneſday the 12th, where I remained ſnug and ſafe in the houſe of an old female friend until Sunday 23d March, (whoſe care for me I ſhall never forget, and only wiſh I may ever have it in my power to reward her ſufficiently), within 500 yards of Bow-ſtreet. I did not keep the houſe all this time, but ſo altered, excepting the ſcar under my eye, I think you could not have *rapt* * to me. I ſaw Mr Williamſon twice; but, although countrymen commonly ſhake hands when they meet from home, yet I did not chooſe to make ſo free with him, notwithſtanding he brought a letter to me: He is a clever man, and I give him credit for his conduct.

* This is what is called *flaſh* language, and means *ſwore* to me

My female gave me great uneaſineſs by introducing a *flaſh man* to me, but ſhe aſſured me he was a true man, and he proved himſelf ſo, notwithſtanding the great reward, and was uſeful to me. I ſaw my *picture* * ſix hours before, exhibited to public view; and my intelligence of what was doing at Bow-ſtreet office was as good as ever I had in Edinburgh. I left London on Sunday 23d March, and, from that day to this preſent moment, that I am now writing, have lived on board a ſhip, which life agrees vaſtly well with me. It is impoſſible for me at preſent to give you my addreſs, but I beg you will write me or dictate a letter to Thom, and let it be a very long one, giving me an account of what is likely to become of poor Ainſlie, Smith, and his wife; I hope that neither you nor any of your connections has been innocently involved by thoſe unfortunate men, or by that deſigning villain Brown; I make no doubt but he is now in high favour with Mr Cockburn, for I can ſee ſome ſtrokes of his pencil in my portait; may God forgive him for all his crimes and falſehoods. I hope in a ſhort time to be in Edinburgh, and confute perſonally many falſe aſperſions made againſt me by him and others. Write me how the main went; how you came on in it: If my black cock fought and gained? &c. &c. As I can give you no direction how to write me, you'll pleaſe ſeal your letter, give it to Robert Smith, and he will deliver it to my ſiſter, who will take care that it be conveyed ſafe to me, wherever I may happen to be at the time; for I will give ſuch directions, that every thing that is ſent me ſhall be forwarded from place to place, until it come to my hand. I have lived now eighteen days on board of ſhip, and in good health and ſpirits, although very bad when I came on board, having my tongue and throat in one ulcer, not a bit of ſkin upon either, and the medicine I took in my friends, and by her direction, (for

* This means the deſcription of him which was inſerted in all the Edinburgh and London News-papers, and was very minute and particular.

(for ſhe is one of experience) juſt beginning to operate; but I found it neceſſary, at all events, to remove; ſo I underwent a complete ſalivation on board ſhip. During all my trials ſince I left Edinburgh, my ſpirits, nor my preſence of mind, never once forſook me; for which I have reaſon to be thankful. My beſt compliments to Mrs Henderſon; and I will order payment of the two guineas as ſoon as I have accounts from the gentleman I have intruſted with my affairs; let her not be anxious about it, for, if I live, it ſhall be paid, Dear Michael.

Dear Michael,

I am very uneaſy on account of Mrs Grant and my three children by her; they will miſs me more than any other in Scotland; may God, in his infinite goodneſs, ſtir up ſome friendly aid for their ſupport; for it is not in my power at preſent to give them the ſmalleſt aſſiſtance; yet I think they will not abſolutely ſtarve in a Chriſtian land, where their father once had friends, and who was always liberal to the diſtreſſed.

I beg you will order the incloſed to be delivered into her own hand; and I will take it kind if Mrs Henderſon will ſend for her and give her good advice; I wiſh ſhe may be enabled to keep what little furniture ſhe has together.

I think ſhe ſhould endeavour to get her youngeſt daughter Jean ſent to Aberdeen to her friends, where ſhe will be well brought up, and I will order an yearly board to be paid for her, perhaps ſix pounds per annum; it will be an eaſe to Mrs Grant, and better for the child. My eldeſt daughter Cecill ſhould be put apprentice to the milliner or mantua-making buſineſs; but I wiſh ſhe could learn a little writing and arithmetic firſt. I wiſh to God ſome of my friends would take

take ſome charge of Cecill; ſhe is a fine ſenſible girl, conſidering the little opportuniy ſhe has had for improvement. I have been now eighteen days on board, and I expect to land ſomewhere to-morrow. The ſhip rolls a good deal, and it is with ſome difficulty I get this wrote, and my paper being exhauſted, I ſhall conclude this epiſtle. Pleaſe make my compliments to Mr Clark, and a few other friends, and, in particular, to Mr B******; tell him I *glimed the ſcrive* * I had of him; he is a gentleman I have a great regard for. Pray do not forget writing me a long letter. I am,

Dear Michael,

For ever your's,

(Signed) W. B.

Pray do not ſhow this ſcroll to any but your wife.

A COPY *of a* LETTER *or unſigned ſcroll, in the hand-writing of* William Brodie, *founded on in the Indictment, marked* No. I.

My Dear SIR,

By ſhort inſtructions ſent me when I left London, which I think were drawn up in my couſin ******'s hand, I was forbid writing to any one in Britain, Mr Walker excepted, for a year or two; but this order, if neceſſary, I find it not eaſy for me to comply with; for I muſt correſpond with my friends in whatever part of the globe

I

* This is another ſpecimen of the *flaſh* language, or *ſlang*; it means to drink. For inſtance, in this language, they ſay, *Bien coulie, glim the ſcrive*, that is, Good fellow, drink your glaſs.—It is ſuppoſed, therefore, that the above phraſe means, I got drunk.

I am, and I hope they will do ſo with me, and write them when an opportunity offers. I have gone through much, in every ſenſe of the word.

I wrote Mr Walker from this the 12th current. I received an anſwer the 18th, and wrote again the 23d current; and, upon receiving his next, I hope to be enabled to embark in the firſt ſhip for America, to whatever port ſhe is bound, which will probably be Charleſtown, South Carolina, as there is a ſhip lying to for that port; and, notwithſtanding the climate is very hot, and not ſo ſalutary to Britiſh conſtitutions, eſpecially at the time I will arrive, which will be about the dog days, I will ſettle there, if I think I can do better than at Philadelphia or New York. Longevity to me is now no object; but, at any rate, I will be at New York; and I hope to find there letters, and, if poſſible, ſome clothes and tools, otherwiſe I will be badly off indeed. It grieves me to hear my creditors were ſo rigorous haſty, but well pleaſed on hearing the deed and conveyance had the proper effect. I hope all my creditors will be paid, and a reverſion, which can be no object to the Crown. Were an application made to the Solicitor, and, if needful, a ſupplication, in my name, to his mother, and uncle the Treaſurer, perhaps it might be a means either of quieting or getting eaſier through the threatened ſuit with the Crown; but this is only my idea. At any rate, if my clothes and tools muſt go to ſale, a proper aſſortment of tools, put into my beſt cheſt, might be put up in one lot, and my wearing apparel and linens in another lot: They are worth more to me than any one, and, I think, few in Edinburgh will bid for them, if known they are deſigned for me; but if any one bids their value, in God's name let them have them, otherwiſe I hope they will be bought for me. I wiſh it were poſſible for me to know, before I left this, if I might expect them at New York; if otherwiſe, I will be under an abſolute neceſſity of laying out what little

money may remain, after paying my paſſage, and clearing my board and lodging here, to my laſt ſhilling, and buying a few neceſſaries, otherwiſe I will land almoſt naked; and, if poſſible, to reach a few tools, both of which, I am informed, are L. 50 *per cent.* dearer in America than here. I received from Mr Walker, in all, L. 12:16:0, and he would pay ſomething for three days I ſlept in Mr ———'s. I am, at preſent, two guineas in debt to my landlord, and not a ſtiver in my pocket for four days paſt. This is the deareſt place I was ever in.

I beg I may hear from you when at New York; and, if directed to Mr John Dixon, to the care of the Reverend Dr Maſon, I will certainly receive it, (as I know no other name there to deſire you to direct to); for I will certainly call there, whatever part I land or ſettle in, in expectation of letters, and, in particular, a long letter from you, in which, pleaſe anſwer the following queſtions without reſerve. I am prepared to hear the worſt. How does my dear ſiſters keep their health? I hope the ſhock of my departure, and what followed, has not injured either of them in health. How did they ſtand it? Where does my ſiſter ****** live? I hope there is no alteration in Mr Sheriff's friends to my dear ******. If money is an object, it is all in his favour. How is Mr and Mrs *****, and Mr *******, to whom I am for ever much obliged for ſettling my paſſage: It was a deep cut, but the more I am obliged to him, and ſhall never forget it: He is a feeling and a generous gentleman. I am ſorry I cannot ſay ſo much of my couſin ******, although he, too, was anxious for my off going. How does my uncle and Mr ******* keep their health? From his conduct and repeated expreſſions, I never had much reaſon to expect any thing from him, but now far leſs, although more needful. I believe few, at my age, ever went out more ſo. At preſent, I am deſtitute of every thing. I can put every article I have upon my back, and in my pocket. How does

does Mrs ******** and her ſon's family? Who were the moſt forward of my creditors to attach? How does my affairs turn out in the whole? If R***** S**** is employed, has he been active and attentive? He would need to be looked after, although he may be uſeful; and any news or alterations relating to my friends that may have happened. What has been done, or likely to be done, with the two unfortunate men Smith and Ainſlie, and the greater villain John Brown, *alias* Humphry Moore? Was John Murray, *alias* John Taſker, brought from England?

Whatever theſe men may ſay, I had no hand in any of their depredations, excepting the laſt, which I ſhall ever repent, and the keeping ſuch company, although I doubt not but all will be laid to me. But let me drop this dreadful ſubject.

(Signed with the following initials)

S. W. T. L. R. S. J. M. J. S.

A COPY *of a* LETTER *or unſigned ſcroll, in the hand-writing of* William Brodie, *founded on in the Indictment, marked* No. 2.

Pray write me what is become of Anne Grant, and how is her children diſpoſed of. Cecill is a ſenſible, clever girl, conſidering the little opportunity ſhe has had of improving. My dear little William will be, if I can judge, a hardy boy.

Jean

Jean is her mother's picture, and too young to form any opinion of.

What has become of Jean Watt; ſhe is a devil and a *****. I can form no opinion of Frank or his young brother; but pray write how they are diſpoſed of.

If you pleaſe, write me what is become of the two unhappy men, Smith and his wife, and Ainſlie. Are they yet? Is their trial come on? and the greater villain Brown, *alias* Humphry Moore? I ſhall ever repent keeping ſuch company; and, whatever they may alledge, I had *no direct concern* in any of their depredations, excepting *the laſt fatal one*, by which I loſt ten pounds in caſh; but I doubt not but all will be laid to my charge, and ſome that I never heard of.

(The following is written at the foot of the page.)

I often went in a *retregard*. I have been all my life in a *reteregard* motion.

(What follows is written on the other ſide.)

Does Mr Martin ſtand his bargain? Is any of my late property ſold? Who is making out my accounts? Has R***** S**** been uſeful and active in my affairs? He is double, and would need looking after.

Perhaps, in courſe of making out and ſettling my accounts, ſome queſtions may occur that I may ſolve. If there is any ſuch, pleaſe write them down, and I will anſwer them in courſe. Has any ſettlement taken place with Mr Little? I am afraid my affairs will be

a laborious taſk to you; but I hope all my creditors will be paid, and a reverſion. If all my moveables is not yet ſold, I beg my clothes and linen, and a ſet of uſeful tools, may be procured for me: They are worth more to me than another. I wrote more fully ſome time ago to Mr Walker on this head, and alſo Mr Sheriff, the 8th April; but I know not if he received it. Pray let me know if he did, and how he ſtands affected towards me. Whatever be his ſentiments, I ſhall always eſteem him, and regard him as my brother; but I ſhall never write another friend until I hear from you, and have your opinion how I and they will take it. Pray did Captain Dent ever make any diſcovery who I was when he arrived at Leith.

(Signed with the following initials.)

J. L. J. M. R. S. J. S.

A COPY *of a* LETTER *from Meſſ.* Lee, Strachan, *and* Co. *Merchants in London, to Meſſ.* Emanuel Walker *and* Co. *Merchants in Philadelphia.*

Meſſ. Emanuel Walker & Co. *London, May* 1. 1788.

SIRS,

You will pleaſe to ſupply the bearer, Mr John Dixon, with caſh to the amount of fifty pounds Sterling, taking his bill on Mr William

liam Walker, attorney, in the Adelphi, London, for the ſame, which will be duly honoured, and oblige,

SIRS,

Your moſt obedient,

Humble ſervants,

Lee, Strachan, & Co.

Meſſ. Emanuel Walker & Co.
Philadelphia.

A COPY OF THE DECLARATION

OF

WILLIAM BRODIE,

LATE CABINET-MAKER IN EDINBURGH,

Taken before the Sheriff of Edinburgh, upon the 17th day of July, 1788 *years.*

Declares, That he does not at preſent recollect the name of the veſſel in which the declarant went from the river Thames to Holland in the month of April laſt, that is, in which he arrived in Holland in April laſt: That, before he left the veſſel, he gave ſome letters, at preſent he does not recollect the number, written by himſelf,

to

to one Geddes *, a paſſenger on board the veſſel. And being ſhown a letter directed to Michael Henderſon, ſigned W. B. dated Thurſday the 10th of April laſt, declares, That he cannot ſay that the letter was *not wrote* by him, and given to Geddes. And being interrogate, If one of the letters given to Geddes was not directed to Mr Matthew Sheriff upholſterer in Edinburgh, and ſigned John Dixon, dated Fluſhing, Tueſday the 8th of April 1788? declares, That the declarant cannot give any poſitive anſwer to that queſtion; and he does not ſuppoſe he would have ſigned any letter at that time by the name of John Dixon, eſpecially as he had wrote other letters at the ſame time, and given them to Geddes, ſigned by his initials, W. B. Declares, That the declarant, when taken into cuſtody at Amſterdam, on the twenty-ſixth of June laſt, went by the name of *John Dixon.* Declares, That the declarant firſt became acquainted with George Smith in Michael Henderſon's, a long while ago, when Smith was indiſpoſed, and bedfaſt there: That the declarant has been in George Smith's houſe in the Cowgate. And being interrogate, declares, That he cannot ſay poſitively whether he was in Smith's houſe any day of the week before the declarant left Edinburgh, which, to the beſt of the declarant's recollection, he did upon the *ninth* of March laſt, and *upon Sunday*, as he thinks. Declares, That, having received a meſſage that ſome perſon in the jail of Edinburgh wanted to ſee him, he went there, and found it was either Smith or Ainſlie who had been inquiring for him; but the declarant, when going there, was told by the keeper, That neither Smith nor Ainſlie could be ſeen; and that this was the night preceding his departure from Edinburgh. Being interrogate, If reports had not been going of the Exciſe Office having been broke into the week before the declarant left Edinburgh, if he, the declarant, would have taken that ſtep? declares, That it was not in conſequence of that

* Vide Geddes's evidence, page 18.

that report that he left Edinburgh; but that the declarant being acquainted with Smith and Ainſlie, then in cuſtody, did not know what they might be induced to ſay to his prejudice, was the cauſe of his going away. Declares, That the declarant has frequently been in company with John Brown, *alias* Humphry Moore, as is reported to be his real name, Andrew Ainſlie, and George Smith, and drank with them. And being ſhown three letters, one dated Thurſday, 10th April 1788, directed to Mr Michael Henderſon, Graſs Market, ſigned W. B.; another, dated Fluſhing, Tueſday 8th April, 1788, directed to Mr Matthew Sheriff, upholſterer in Edinburgh, and ſigned John Dixon; another, dated Thurſday, 10th April, 1788, directed to Mrs Ann Grant, Cant's Cloſe, Edinburgh, ſigned W. B. and deſired to ſay, whether or not the ſaid three letters are holograph of the declarant? declares, That he *does not incline* to give any poſitive anſwer, the appearance of writing varies ſo much. This, &c.

Here the Lord Advocate declared that the proof upon the part of the Proſecutor was finally cloſed.

The Court then deſired the Counſel for Mr Brodie to proceed to their Exculpatory evidence.

EXCUL-

EXCULPATORY PROOF for Mr Brodie.

LIST of WITNESSES to be adduced in exculpation of William Brodie.

1. Robert Smith wright in Edinburgh, late foreman to the ſaid William Brodie.
2. George M'Intoſh, alſo wright, and late journeyman to the ſaid William Brodie.
3. John Niel, alſo wright, and late journeyman to the ſaid William Brodie.
4. Arthur Giles wright in Edinburgh.
5. William Watſon wright in Canongate.
6. William Retſon, or Reſton, nailer, Portſburgh.
7. James Cargill ironmonger, Edinburgh.
8. Millar ironmonger there.
9. George Burton ironmonger there.
10. James Goldie ironmonger there.
11. Daniel Maclean, waiter to William Dryſdale vintner in Edinburgh.
12. George Lees coachmaker there.
13. Alexander Ferguſſon dyer there.
14. Patrick Taylor ſmith there.
15. Charles Macleod, apprentice to Patrick Taylor.
16. Agnes Finlay, ſpouſe to Michael Henderſon ſtabler, Graſsmarket.

17. Alexander Mackay, inner turnkey in the tolbooth of Edinburgh.
18. James Reid indweller in Edinburgh, and preſent priſoner in the tolbooth.
19. Alexander Brodie baker, Nether-Bow.
20. James Murray ſheriff-officer.
21. Helen Aliſon, ſpouſe to William Wallace maſon, Libberton's wynd.
22. Jane Watt reſidenter there.
23. Peggy Giles, ſervant to —— Grahame publican at Muttonhole near Edinburgh.
24. Matthew Sheriff upholſterer in Edinburgh.

Under proteſtation to add and eik.

(Signed) *Alexander Wight*
for the Pannel.

The Counſel for Mr Brodie here obſerved, that the object of the exculpatory proof was to ſhow, that, on Wedneſday the 5th of March laſt, the night on which the robbery of the Exciſe was committed, Mr Brodie was otherways employed the whole of that afternoon and evening, which, if eſtabliſhed, excluded the poſſibility of his being concerned in that robbery.

WITNESS I.

Matthew Sheriff upholſterer in Edinburgh, being then called and examined, ſaid, That he was brother-in-law to the priſoner, Mr Brodie: That, on Wedneſday the 5th of March laſt, the witneſs dined with Mr Brodie in his own houſe: That he thinks he went there

there to dinner about a quarter after three o'clock *; and Mr Brodie was then at home: That there were preſent at dinner Mr Brodie, his ſiſter, and aunt, the witneſs, and a gentleman that he did not know, nor did he remember his name, or knew any thing about him: That the witneſs drank tea in Mr Brodie's, and continued there till within a few minutes of eight o'clock at night: That Mr Brodie was preſent during all the time; and when the witneſs came away, he left Mr Brodie in his own houſe: That Mr Brodie was dreſſed in lightiſh coloured, or grey clothes.

On croſs examination by the Counſel for the proſecution, ſaid, That he had no particular circumſtance to direct his remembrance as to the exact time of his leaving Mr Brodie's houſe, but general recollection: That he could not be poſitive as to the preciſe time; but when he went home to his own houſe in Bunker's-hill his clock wanted ſome minutes of eight †: That on the day following (Thurſday) Mr Brodie dined with the witneſs, and was in his houſe from three o'clock till about eleven o'clock at night ‡: That the reaſon of his remembering the days ſo accurately, is from Mr Brodie's having left Edinburgh on the Sunday following the 9th of March.

WIT.

* As Brown, Ainſlie, and Smith's maid, all concur that Mr Brodie was in Smith's houſe on the *afternoon* of the 5th March, it might appear a contradiction to this evidence; but Brown has fixed that it was very early in the afternoon, ſome time after two o'clock, but could not ſay that it was after three; ſo that it is evident the meeting in Smith's which they alluded to, was between two and three o'clock, and before this witneſs came to dine with Mr Brodie.—Vide Brown's evidence, page 48.

† From Mr Brodie's houſe in Brodie's cloſe, Lawnmarket, to Bunker's-hill, is above half-a-mile; and Mr Sheriff was home ſome minutes before eight o'clock.

‡ Peggy Giles, Jean Watt's ſervant, ſaid Mr Brodie was in her miſtreſs's houſe on Thurſday afternoon.

WIT. II.

Jean Watt, reſidenter in Libberton's wynd, Edinburgh.—Before proceeding to this witneſs, the *Lord Advocate* queſtioned her very cloſely, whether or not ſhe was married, or had ever been married? which ſhe anſwered in the negative *. She then ſaid, That ſhe was well acquainted with the priſoner, Mr Brodie; remembered that, on Wedneſday the 5th of March laſt, he came to her houſe at eight o'clock at night, juſt as the bell was ringing: Tha the ſtaid there all night, and was not out from the time he firſt came in till near nine o'clock next morning: That they went early to bed, about ten o'clock, as Mr Brodie complained of being unwell: That he ſlept with the witneſs; ſhe had a family of children to him: That ſhe was poſitive as to the day and hour, and gave as her reaſon, that Mr Brodie never ſlept in her houſe after: That ſhe did not ſee Mr Brodie from the time he left her houſe on the *Thurſday morning* till the *Saturday* after, when he called; and, on the Monday following, ſhe heard that Mr Brodie had gone away on the Sunday.

WIT. III.

Peggy Giles, ſome time ſervant to Jean Watt, the preceding witneſs,—ſaid, That ſhe knew the priſoner, Mr Brodie: That he frequently ſlept at her miſtreſs's houſe, remembered that he came there on Wedneſday evening the 5th of March laſt, juſt as the eight o'clock bell was tolling on the *town* bell of the Tron Church. Being aſked, Where the Tron Church was? ſhe anſwered, In the Parliament Cloſe: That ſoon after Mr Brodie came in, the witneſs was ſent out for

* A report having been circulated, that Mr Brodie was married to this witneſs in priſon, which, if true, would have diſqualified her from being a witneſs, it ſeems to be the object of the Lord Advocate's queſtions to aſcertain the fact.

for ſome beer, bread, and cheeſe, and was out about ten minutes; and, when ſhe returned, Mr Brodie was ſtill in the houſe: That her miſtreſs, and Mr Brodie, ſupped early about half an hour after eight o'clock: That Mr Brodie ſtaid all night, and went away next morning about nine o'clock: That ſhe ſaw Mr Brodie in the houſe twice again on the ſame day, *Thurſday* *, viz. once in the forenoon, and once in the afternoon; and ſhe ſaw him again there on the Saturday night.

WIT. IV.

Helen Aliſon, ſpouſe to William Wallace in Libberton's wynd,—remembered that, on Thurſday morning the 6th of March laſt, as ſhe was ſtanding at her own door, at the foot of Jean Watt's ſtair, ſhe ſaw Mr Brodie come down ſtairs: That the witneſs had a boy of Mr Brodie's, about ſix years of age, by the hand; and as Mr Brodie paſſed, he gave the child a halfpenny, and clapped him on the head: That the boy told the witneſs, that Mr Brodie had been in their houſe all night; but that he was not well of a ſore throat: That this happened a little before nine o'clock in the morning; and the reaſon why ſhe recollected the day and hour ſo particularly was, that ſhe had the day before been at the market, and bought ſome ſhoes for her huſband and children, one pair of which ſhe had loſt, and was then ſtanding at the door waiting her huſband's coming home to breakfaſt, to ſee if he had laid them by any where: That the witneſs told the above circumſtance reſpecting Mr Brodie, to one Murray, a ſheriff-officer, ſome days after this, when he was ſearching Mrs Watt's houſe for Mr Brodie.

* This is inconſiſtent both with Mr Sheriff's and Jean Watt's evidence. According to Mr Sheriff's, Mr Brodie was with him from three in the afternoon till eleven at night. Jean Watt ſaid ſhe did not ſee him at all on *Thurſday*, and not till Saturday.

W I T. V.

James Murray ſheriff-officer,—remembered that, on Tueſday the 11th of March laſt, he went to ſearch Mrs Watt's houſe, under the authority of the Sheriff's warrant, and to bring her before the Sheriff for examination: That he found nothing ſuſpicious in the houſe, and while he waited till Mrs Watt ſhould put on her clothes to accompany him to the office, he heard Helen Aliſon, the preceding witneſs, ſay to Mrs Watt, "Who would have thought when I ſaw "Mr Brodie coming down your ſtair on Thurſday morning, when "he gave his child a halfpenny, that he would have been ſuſpected "of ſuch a thing as this;" in which obſervation the witneſs and "Mrs Watt agreed with Mrs Aliſon."

W I T. VI.

James Laing writer, in the Council Chamber,—remembered of a proceſs brought before the Magiſtrates, at the inſtance of one Hamilton, a chimney-ſweeper in Portſburgh, againſt the priſoner, Mr Brodie, for uſing loaded dice; and the witneſs thought there was ſome proceedings in that proceſs within theſe ſix months. Being aſked, If he knew Mr Brodie to be a gambler? anſwered, That he never gambled with him.

W I T. VII.

Robert Smith, ſome time foreman to Mr Brodie,—ſaid, That Mr Brodie kept a box with pick-locks in a room off his ſhop, which were often uſed in the courſe of their employment as cabinet-makers and houſe-carpenters; and that all the workmen had acceſs to it: That he believed Mr Brodie uſed ſpring-ſaws for cutting the ſpurs of game-cocks: That theſe ſaws are ſometimes uſed by cabinet-makers

kers in the way of their buſineſs for cutting braſs ferrules and other things of that kind. And being ſhown the keys libelled on, ſaid, He never remembered to have ſeen any keys of that kind before.

Here the exculpatory evidence was cloſed, a few minutes after one o'clock, of the morning of the 28th of Auguſt.

The *Lord Advocate* then roſe and addreſſed himſelf to the gentlemen of the JURY: He ſaid, that, after the very long and fatiguing ſederunt which they had already had, he would endeavour to diſcharge his duty in as few words as poſſible; and, from the way in which the evidence had turned out, he did not ſuppoſe that it would be neceſſary for him to dwell long upon the import of it to ſo ſenſible and diſcerning a Jury.

The ſituation of the unfortunate priſoners at the bar, excited painful ſenſations in his mind, and it would doubtleſs have the ſame effect upon the gentlemen of the Jury; but public juſtice required that theſe feelings ſhould be repreſſed. If the priſoners were really guilty of the crime charged in the indictment, it was of little conſequence what their former ſituations in life were; one of them (Smith) was a ſtranger in this country, and the hiſtory of him was little known, farther than his own declaration had informed, and his appearance beſpoke him to be a perſon in an inferior, if not in the loweſt ſtation of life. The other priſoner, Mr Brodie, was of a very different deſcription; his ſituation was far above the reach of want, and, conſequently, of temptation; he had a lawful employment, which might have enabled him to hold his ſtation in ſociety with reſpectability and credit; that he had been more than once officially at the head of his profeſſion, and a member of the city council:

cil: If, therefore, an acceſſion to the crime libelled had been brought home to him, his ſituation, in place of alleviating his guilt, was a high aggravation of it; it could be no apology for him that he had been ſeduced by bad company, and bad example; on the contrary, his aſſociating with ſuch company was, of itſelf, a high offence for a man in Mr Brodie's ſtation.

His Lordſhip ſaid, that it was totally unneceſſary to go over the evidence tending to ſhow that the Exciſe Office was actually robbed in the manner mentioned in the indictment, as he ſuppoſed that was a fact which would not be diſputed.

His Lordſhip then ſaid, that the proof, ſo far as it regarded the conviction of Smith, was ſo completely concluſive, that no poſſible doubt could be ſuggeſted with regard to his guilt; his own declarations were clear, uniform, and conſiſtent, and were fully corroborated by all the other evidence, both direct and circumſtantial, that had been led; and therefore he would not conſume the time of the Jury, and of the Court, by going over it, as it muſt have already carried full conviction to their minds.

With regard to the other priſoner, Mr Brodie, his Lordſhip ſaid, that the crime libelled appeared to be equally well ſubſtantiated againſt him; but, as the circumſtances of his caſe were ſomewhat different from the other, he would beg leave to recapitulate the heads of the evidence, ſo far as it appeared to him to verify the charge.

As Mr Brodie's counſel had objected ſo ſtrongly to the *admiſſibility* of certain evidences, his Lordſhip ſaid he would firſt conſider the proof, independent altogether of theſe exceptionable parts of it. That Mr Brodie was very intimate with Smith, Ainſlie, and Brown, (who,

(who, by their own confeſſions, had committed the robbery libelled), could not be doubted; it was admitted by himſelf in his letters and declaration, and was confirmed by the evidence of Smith's maid, to whoſe credibility no objection had been made, and who had ſaid that ſhe had ſeen them often together in her maſter's houſe: This witneſs had alſo fixed, that, about the time the robbery was committed, the two priſoners, along with Brown and Ainſlie, were in Smith's houſe in the duſk of the evening; that they were in the upper room altogether, and had ſome cold fowl and freſh herrings: That ſhe had ſeen Mr Brodie that afternoon, when he had on light coloured clothes; and that, when he came in the evening, he had on old-faſhioned black clothes, which ſtruck her as a particular circumſtance, and ſhe had mentioned it to her miſtreſs.

The evidence of this witneſs was corroborated to this extent by Brown and Ainſlie, and alſo by Smith's declarations; which laſt, his Lordſhip ſaid, he did not mean to found upon as evidence againſt Mr Brodie, but it was a curious fact.

Mr Brodie's letters, too, afforded, if not a direct confeſſion of the crime libelled, at leaſt ſuch a ſtrong ſuſpicion of it, as, joined to his other conduct, excluded the poſſibility of innocence: For he had ſaid, in two of theſe letters, that he had no *direct* acceſſion to the depredations of Smith, Brown, and Ainſlie, *excepting the laſt fatal one;* which expreſſion could only apply to the robbery of the Exciſe; for it had happened on the Wedneſday evening, and Brown gave information of it on the Friday evening immediately after. It was, therefore, in all probability, the laſt of the depredations of this dangerous combination; and Mr Brodie's having applied the expreſſion *fatal* to it, identified it beyond all doubt.

The ſuſpicions againſt Mr Brodie, however, did not reſt here; for it had been proved, that, on the evening that Smith and Ainſlie were apprehended, he had attempted to get acceſs to them in priſon, and was refuſed: That, early next morning, he ſent for his foreman, and queſtioned him as to what he had heard concerning them, and pretended that he was going to the country: That he then made a clandeſtine eſcape from Edinburgh, and reached London in three days: That he was concealed there for ſeveral weeks; and admits, in one of his letters, that he knew Mr Williamſon was in ſearch of him, but he did not chooſe an interview: That he was, under cloud of night, carried on board a ſhip cleared out for Leith; which ſhip went out of her way with no other intention but to land him at Fluſhing: That he had changed his name to *John Dixon*, and had written letters to people in Edinburgh under that falſe ſignature, explaining his whole future operations; in conſequence of which letters he had been traced, apprehended, and brought to trial. His Lordſhip ſaid, that he had heard no cauſe aſſigned for this conduct of Mr Brodie's. Indeed, it was impoſſible to aſſign any cauſe for it conſiſtent with innocence.

His Lordſhip alſo adverted to the circumſtances of ſuſpicion ariſing from the different ſearches of Mr Brodie's houſe, and articles there found, ſuch as the piſtols hid under ground, the dark lanthorn, &c. That the piſtols were found out by the other priſoner, Smith, and were identified to have been uſed on the occaſion of the robbery.

That all theſe circumſtances, taken together, afforded ſuch a chain of conſiſtent and connected evidence, that it was impoſſible to reſiſt the conviction ariſing from it; and he contended, that it was ſufficient to eſtabliſh Mr Brodie's guilt, independent altogether of the *direct* evidence of Brown and Ainſlie.

His

His Lordſhip here candidly admitted, that the *credibility* of theſe witneſſes was liable to ſuſpicion; and that, if the proof reſted upon their evidence alone, he would not call upon the gentlemen of the Jury to find the priſoners guilty upon it;—but, in ſo far as their evidence was corroborated by the general tenor of the other unexceptionable parts of the proof, they were entitled to credit.

His Lordſhip ſaid, that Brown and Ainſlie were ſo conſiſtent with each other, and with the whole other evidence adduced, both real and circumſtantial, that he had not been able to diſcover a ſingle diſcrepancy in the whole, excepting where Brown and Ainſlie had ſaid, that, after the robbery, they did not either of them ſee Brodie again that evening, but Smith's maid had ſaid, that they all met again in Smith's houſe, and ſupped there, and that Brodie ſupped along with them. This, however, his Lordſhip ſaid, did not appear to be a fact of any importance, or that tended to diſcredit the evidence of either of the witneſſes, as it was evident Smith's maid had confounded the firſt and ſecond meeting together.

That, with regard to the proof of an *alibi* which had been attempted, his Lordſhip ſaid, it was exceedingly defective: That Mr Sheriff, Brodie's brother-in-law, was by no means an unexceptionable witneſs: That he was brought forward *ſingly* to prove a fact, which, if true, Mr Brodie could be at no loſs to eſtabliſh by other unexceptionable evidence. Sheriff himſelf had admitted, that, on the day he dined with Mr Brodie, there were other perſons at table, particularly a gentleman, whom he did not know, and could not remember his name. Why was not this gentleman brought forward on this occaſion? Or why was not ſome of Mr Brodie's ſervants brought forward to corroborate Sheriff's evidence? which, his Lordſhip ſaid, it appeared to him ſtood in need of it; but, taking it as it was, it by no means affected the credibility of the Proſecutor's evidence;

dence; for Sheriff had ſaid, that he left Brodie a little before eight o'clock, and both Brown and Ainſlie take him up much about the ſame time; ſo that there was here no inconſiſtency whatever.

That, with regard to Jean Watt and her ſervant, they ſtood in a ſituation that affected their credibility very much, particularly Watt, who, by her own evidence, appeared to be a woman of an abandoned character, had a family of children to Mr Brodie, and was denominated by him, in one of his letters, by the appellation of a *ſhe devil.* This witneſs and her maid had, no doubt, concurred moſt minutely in a very extraordinary fact, that Mr Brodie came to Watt's houſe juſt at eight o'clock, as the bell was ringing, and did not leave the houſe again till nine o'clock next morning: That, although theſe two witneſſes had agreed in the day, the hour, and even the minute of Mr Brodie's coming to Watt's houſe on the 5th of March, yet, when they came to be croſs queſtioned, they did not agree even in days; for Jean Watt ſaid, that ſhe did not ſee Brodie from the Thurſday morning, at nine o'clock, till the Saturday afternoon following; yet her maid ſaid, that he was twice in the houſe on the *Thurſday*, both in the forenoon and *afternoon;* and yet Sheriff ſaid, that Brodie was in his houſe on the Thurſday, from three o'clock in the afternoon, till eleven o'clock at night.

Such being the characters of the witneſſes brought to prove this *alibi*, and ſuch their inconſiſtency, his Lordſhip ſaid, he would leave the whole to the conſideration of the Jury.

Mr

Mr John Clerk, as Counſel for the priſoner, Smith, then roſe, and obſerved to the Jury, that his unfortunate client was in ſuch reduced circumſtances, that he had not been able to make thoſe exertions in procuring either Counſel or evidence, which the more opulent priſoner had done. That he was a ſtranger in this country, and, whatever was favourable in his character or conduct, was unknown; while, on the other hand, every thing that tended to blacken his character, and fix guilt upon him, was brought forward.

The evidence, ſo far as regarded Smith, was two-fold: In the *firſt* place, the parole teſtimony of the witneſſes adduced for the proſecutor; and, 2*dly*, The ſuppoſed real evidence ariſing from his own declarations.

With regard to the *firſt* of theſe,——Mr Clerk was proceeding to ſtate to the Jury, that he would be able to ſhow, that evidence had been admitted in this caſe which was both *improper* and *inadmiſſible*; the Lord Juſtice Clerk, however, interrupted him, and ſaid, that, as the Court had determined the *admiſſibility* of the whole evidence led, it was reflecting upon the judgment of the Court now to call it in queſtion.

Mr Clerk, however, inſiſted, that he was not then under the correction of the Court: That he was addreſſing himſelf to the Jury, who were judges both of the law and of the fact.

After ſome farther altercation on this head, it was agreed, that, as the Dean of Faculty would have occaſion to occupy that ground,

and to ſtate the import of the parole teſtimony to the Jury, it would be altogether unneceſſary to anticipate what he had to ſay on that head.

With regard to Smith's own declarations founded on, it was very true that they admitted his acceſſion to the crime libelled; but they, at the ſame time, alſo admitted many other acts of criminality, which no man in his right ſenſes could be ſuppoſed to accuſe himſelf of; it was therefore reaſonable to ſuppoſe that theſe declarations were emitted under ſome temporary fit of frenzy, or ſtupid ſuſpenſion of his faculties, and that his cooler judgment had rejected the account given by him when in that ſituation.

Theſe declarations, however, taking them as they ſtood, were altogether extrajudicial, and admiſſible only as adminicles of evidence, not as *legal* proof of the fact; and if it ſhould be ſhown, to the ſatisfaction of the Gentlemen of the Jury, that the parole and circumſtantial evidence was either contradictory, inconſiſtent, or incredible, they would lay very little ſtreſs upon the extrajudicial confeſſions of the priſoner, Smith.

The Dean of Faculty *, who, with indefatigable attention, and a moſt brilliant diſplay of ability, had gone through the whole buſineſs

* We applied to the Dean of Faculty for an account of his ſpeech upon this occaſion, which was truly able and eloquent, and diſplayed an acuteneſs and ingenuity which it would be difficult to do juſtice to. But, by a polite letter from himſelf, we were informed, that he ſpoke *extempore* from the evidence that had been led, and he had

neſs of the trial, at three in the morning roſe and addreſſed himſelf to the gentlemen of the Jury upon the part of Mr Brodie.

He obſerved, that the ſituation of his unfortunate client preſented to the world a moſt aſtoniſhing moral phaenomenon! That a man, deſcended from an ancient and reſpectable family, who, from the ſtate of his affairs, made up by himſelf, was in opulent circumſtances, and infinitely remote from indigence and temptation; who, for a long ſeries of years, had maintained an irreproachable character in ſociety, and had often filled offices of honour and truſt among his fellow citizens, the duties of which he had diſcharged with attention and fidelity:—That *ſuch* a perſon ſhould even be *ſuſpected* of the crime charged in the Indictment, was a moſt extraordinary fact. If it was true, he allowed, that he was of all men the moſt culpable. But who could give credit to ſuch a charge as was here exhibited? for, as an eminent Poet of our own country, who was ſtill alive, had expreſſed himſelf,

> The needy man who has known better days,
> One whom diſtreſs had ſpited all the world,
> Is he whom tempting fiends would pitch upon
> To do ſuch deeds, as make the proſperous men
> Lift up their hands and wonder who could do them *.

It

had not a ſyllable in writing;—that, as he was ſo much immerſed in buſineſs, and was to leave town next day, it was not in his power to attempt ſetting down any thing from memory.

We have, therefore, unaſſiſted, endeavoured to give the beſt account, from memory, of what the Dean ſaid that we poſſibly could, after ſo long and fatiguing an attendance.

The evidence being now fully before the Public, it is thought very immaterial to give the ſpeeches at great length in this laſt ſtage of the Trial.

* Old Norval's ſpeech in Douglas.

It being therefore highly incredible, that Mr Brodie would have all at once departed from his integrity, and daſhed into ſuch guilty and atrocious crimes as were now charged againſt him, it would require a very ſtrong and unſuſpicious proof, indeed, to fix guilt upon him; and, if the parts of Mr Brodie's conduct which appeared to infer ſuſpicions againſt him, could be aſcribed to any other cauſe, the gentlemen of the Jury would lay theſe appearances altogether out of their *view*, in judging of the import of the evidence.

To a certain extent, the Dean of Faculty ſaid, he was obliged to admit the *ſhame*, although not the *guilt*, of his unfortunate client. From an early period of his life, he had had a moſt unhappy propenſity to gaming, which, it appeared, he had indulged to a very great height. To this vice, he had reaſon to aſcribe the diſtreſſing ſituation in which he then ſtood: It had ſubjected him to the loweſt and moſt unprincipled connections, perſons who had attempted to ſacrifice him to their own ſafety. In the courſe of indulging this propenſity, the priſoner, Brodie, met with a profeſſed Gambling Club, almoſt every night, at a houſe which was the common receptacle of all deſcriptions of mankind; and there, the dice, like death, levelled all diſtinctions! This deſtructive ſeminary of vice ought, for the good of ſociety, to be RAZED TO THE FOUNDATION!

The unfortunate priſoner, Mr Brodie, was by no means ſingular in his attachment to that vice; nor was it at all confined to the lower ſtations of life: People of the higheſt rank ſcrupled not, in the courſe of their gambling, to mix with highwaymen and pick-pockets, and to deſcend to practices of chicane and cunning, which, in any other ſituation, they themſelves would abhor. It was but the other day, that a gentleman at Brighthelmſtone *, reputed worth

* The particulars of this ſtory are as follows:
Major ——— had won a conſiderable ſum of money the night before, and in ſuch

worth L. 3000 *per annum*, was detected in the very act of using loaded dice, and obliged to fly the country for it, which was exactly Mr Brodie's situation.

> The very head and front of his offending
> Hath this extent, no more.

The

such a manner as to lead to ſuſpicion; two gentlemen, therefore, were determined to watch him, and, for this purpoſe, planted themſelves the next night on each ſide of his chair, when, taking a proper opportunity, one of them ſeized his hand with the dice in it; he graſped it cloſe, and would not part with them; the other ſeeing this, knocked him down; and, in the fall, the Major drew with him the firſt gentleman, who, however, would not let go his hold till he wreſted the dice from him.

He then preſented them to the company, who inſtantly ſaw and acknowledged the deceit: The Major was attempting ſome apology; the company would hear nothing, but turned him out of the room with every mark of diſgrace and reprobation.

The dice was afterwards preſented to the Jockey Club, in order to come to ſome reſolution upon this tranſaction; but the Preſident ſaid, as their meeting referred more immediately to the Turf, they could do nothing in it, but determined for themſelves not to let ſuch a man, in future, mix with them in any company. This reſolution has been ſince followed in all the reputable gaming clubs.

Such is the ſtory; the reflection that ariſes from it is very obvious, which is, that though this degraded man was ſo *unfortunate for himſelf* as to be detected, where is the public gaming table that is not ſurrounded with ſuch? and where is the man, without a fortune of his own, that can ſpend from one thouſand to two thouſand pounds a year, (as moſt of them do), without having ſome *ſuperiority*, ſome *dexterity* over the generality of thoſe who play with him?

If the independent men, who play at public tables and at public watering-places, therefore, were to *look ſharp*, independently of the conſideration of rank, title, or fortune, they would conſtantly find out *more Majors of this kind*; but, if they *would do better*, they would avoid all thoſe places which are ſubject to the contamination of ſuch men.

The Dean of Faculty then ſaid, that he would endeavour to point out the import of the evidence to the Jury in the following order:

In the *firſt* place, The direct evidence of Brown and Ainſlie.

In the *ſecond* place, The collateral and circumſtantiate evidence.

And, *laſtly*, The exculpatory proof of an *alibi*.

With regard to the evidence of Brown and Ainſlie, it was very true, that the Court had determined the *admiſſibility* of it, but had left its *credibility* to the Jury. One of theſe witneſſes, Ainſlie, as the Jury had already heard, had been accuſed of the very crime charged in the Indictment, and ſteps had been taken to bring him to juſtice for it. It was natural, therefore, to believe, that a perſon in this ſituation would not ſcruple to ſay any thing that tended to ſecure himſelf from puniſhment; and, in this caſe, the event juſtified the obſervation; for although Ainſlie, in the different declarations emitted by him before the Sheriff, had not ſaid any thing that tended to criminate Mr Brodie, yet, no ſooner was Mr Brodie apprehended, than this witneſs was given to underſtand, that he might ſubſtitute Mr Brodie in his place, and ſave his neck, by turning evidence. It was ſaid, that even undue means had been practiſed upon the witneſs, to induce him to criminate Mr Brodie; and a proof, to that effect, had been offered, but diſallowed, as it had not been offered to be brought home to the Lord Advocate. But, whether that was true or not, it was an undeniable fact, that Ainſlie had only one alternative, either to become evidence againſt Mr Brodie, or to be tried, and perhaps hanged, for this crime himſelf. It was a ſituation too powerful to be overcome even by much more virtue than the witneſs could boaſt of: His evidence, therefore,

fore, in ſuch a ſituation, was not only ſuſpicious, but altogether incredible.

The evidence of the other witneſs, *Brown*, was, if poſſible, more exceptionable than Ainſlie's. It had been proved, and admitted by the proſecutor, that he was not only accuſed, but *convicted*, of a former felony, of which he had been pardoned, for the avowed purpoſe of qualifying him to bear evidence upon the preſent trial.—The witneſs had forſeen this conſequence; and it became a matter of infinite importance with him to accompliſh it. He had firſt made this attempt, by informing only againſt Smith and Ainſlie; and his firſt declaration went no farther than accuſing them;—he did not ſo much as mention Brodie's name. Finding, however, that this had not anſwered his purpoſe, he thought it neceſſary to fix upon a perſon whoſe character and ſituation would excite public attention, and whoſe puniſhment would become an object:—The perſon ſo fixed upon happened to be the unfortunate priſoner, Mr Brodie. His acquaintance with the witneſs, and his recent retreat from the country, ſuggeſted him to Brown as a proper perſon to fix an accuſation upon; and he was not miſtaken; for it had completely anſwered his purpoſe, and ſecured his pardon for paſt offences.

The nature and effects of that pardon the Jury had already heard debated at conſiderable length; and it was unneceſſary to detain them with a repetition of it.—It had been found that it reſtored the perſon pardoned to the *capacity* of being admitted an evidence; but that was a matter of no conſequence if his *credibility* ſtood affected: And that this was the caſe, the Lord Advocate himſelf had candidly admitted.

Such being the characters, and ſuch the ſituations, of the *direct* evidence brought forward to criminate the priſoners, it was ſurely entitled

entitled to no degree of credit whatever, as both theſe witneſſes had a manifeſt purpoſe to ſerve by the conviction of the priſoner, Mr Brodie;—a purpoſe, too, which the extremity of virtue could hardly be ſuppoſed to withſtand, much leſs could it be expected from hardened villany and avowed guilt.

If there was, therefore, no credit due to the *direct* evidence of Brown and Ainſlie, the *collateral* proof would be found to be exceedingly defective indeed. The chief witneſs here founded upon was Graham Campbell, ſervant to the priſoner Smith; but her evidence, when examined, amounted to nothing at all; for ſhe was not only perfectly inconcluſive with regard to *time*, but ſtood contradicted with regard to a very material fact. She had ſaid, that, ſome *few nights* before ſhe was apprehended, ſhe ſaw Mr Brodie in her maſter's houſe along with Brown and Ainſlie: That, after ſome time, they went out, and returned again in an hour or two: That Mr Brodie returned along with them; and that they ſupped all together in the kitchen after their return.

This witneſs had not condeſcended upon either the night, or the hour of the night, when this meeting happened; there was therefore nothing to fix it to have been on the evening that the Exciſe Office was robbed. On the contrary, ſhe had condeſcended on a circumſtance which excluded the poſſibility of its being on that evening; for ſhe had ſaid, that they all returned together, and ſupped in in her maſter's kitchen;—yet Brown and Ainſlie both concurred in ſaying, that they did not ſee Mr Brodie again that evening after the robbery was committed, and that he did not return to Smith's with them.

Such a material contradiction in the evidence for the proſecutor could not eſcape the obſervation of the Jury; and it was a ſtrong additional

additional circumſtance, tending to diſcredit the evidence of Brown and Ainſlie.

Much ſtreſs had been laid upon Mr Brodie's abſconding from this country, and upon his letters and declaration libelled on.—All theſe, however, could be accounted for in a manner perfectly conſiſtent with his innocence of the crime charged againſt him.—The Jury would recollect, that Mr Brodie's propenſity to gambling was already fully admitted; and it had come out upon proof, that a proſecution actually depended againſt him before the Magiſtrates of Edinburgh, for uſing falſe or loaded dice *. The unfortunate priſoner, therefore, perhaps conſcious that theſe ſhameful practices could be eſtabliſhed againſt him, had timeouſly withdrawn himſelf from this country, to avoid the ſhame that would neceſſarily have followed on a conviction for ſuch an offence. This, any gentleman poſſeſſed of honourable feelings, and who had a character to loſe, would have done: And, ſurely, it could not be ſaid that Mr Brodie had no character to loſe, and might, therefore, reaſonably be ſuppoſed to be poſſeſſed of honourable feelings. His own letters expreſſed much regret for his paſt conduct, and for his having aſſociated with ſuch company: And the alluſion he made to their depredations could only apply to their gambling, and particularly to the depredation on Hamilton the chimney-ſweeper, which he called the laſt *fatal one;*—and well might he call it ſo; for fatal it had been to him indeed.—But, as to the other more atrocious depredations of Brown, Smith, and Ainſlie, there was not a ſhadow of evidence that tended to eſtabliſh Mr Brodie's knowledge of, much leſs his acceſſion to, them, excepting the evidence of theſe guilty perſons themſelves.

* As Mr Brodie's elopement from this country was aſcribed to this proſecution, we have been at pains to get the particulars of it, for which, ſee Appendix, No. 2.

The matter did not reſt here; for there was not only no credible proof of Mr Brodie's being guilty of the crime libelled, but there was a direct and concluſive proof, excluding the poſſibility of his guilt:—This was the evidence of an *alibi* at the time the crime was committed.—A very unſucceſsful attempt had been made by the Lord Advocate to throw diſcredit upon this part of the evidence, by ſhowing a diſcrepancy between the witneſſes; but that was a matter of no conſequence whatever to the priſoner; for Jean Watt, and her ſervant, both unexceptionable evidences, had poſitively concurred in proving, that, on the night of the robbery libelled, Mr Brodie came to Watt's houſe *juſt as the eight o'clock bell was ringing, and that he was not out again till about nine o'clock the next morning;* and, as it had been eſtabliſhed that the Exciſe Office was not begun to be robbed till (at the earlieſt) about half an hour after eight o'clock, there was here as clear a proof of an *alibi*, upon the part of Mr Brodie, as it was poſſible to conceive; nor could the diſcrepancy of theſe witneſſes, in other particulars, affect their credibility in any ſhape: They were concurring and conſiſtent as to the main fact; and were, on that account, entitled to belief; otherwiſe the diſbelieving them inferred that they had been guilty of a direct and deliberate perjury; a crime which the gentlemen of the Jury would be cautious of fixing a ſuſpicion of, upon characters innocent and unimpeached.

Here the Dean of Faculty concluded a moſt able and ingenious defence for Mr Brodie, by expreſſing his hope, that the gentlemen of the Jury would find, upon a fair review of the evidence, nothing to warrant their returning a verdict that would affect the life of his unfortunate client.

About half paſt four in the morning, the *Lord Juſtice Clerk*, who had never once left the Court, began to ſum up the evidence on both ſides. He had beſtowed the moſt unremitted and animated attention during the whole courſe of this long and fatiguing trial. The moſt minute circumſtance, either for or againſt the priſoners had not eſcaped him; and he went through the whole train of evidence with a ſhrewdneſs, diſcernment, and a manly vigour of underſtanding, that few men could have exerted after ſo much labour. He ſtated, with fairneſs and candour, every part of the evidence; and, after balancing the weight of it on both ſides, gave the moſt ſolid arguments for the deciſion of his own mind.

It would lengthen this account to an unneceſſary extent to follow his Lordſhip through the whole of what he ſaid; and, to avoid the repetition of what has been ſo often ſtated already, we muſt abridge it.

He ſaid, that, with regard to Smith the evidence was ſo perfectly clear, that it was impoſſible to offer any thing that could take off the effect of it.

That, with regard to Brodie, there was a ſtrong chain of connected circumſtantiate evidence; there was alſo poſitive evidence, ſupported by circumſtances inconteſtibly proved; there were Smith's declarations, which, although they could not be legal evidence againſt Mr Brodie, it was impoſſible not to believe, as they coincided in every particular with Ainſlie and Brown; and, ſurely, it could not be ſaid that he was in a ſituation to give falſe teſtimony againſt another, which, at the ſame time, tended to condemn himſelf.

There was then the circumſtance of Brodie's abſconding, abandoning his country, changing his name, and making his eſcape with

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ſo much art and diſguiſe: Would it be believed by any ſenſible Jury that a proceſs by a chimney-ſweeper before the magiſtrates of Edinburgh would have occaſioned this? and there were circumſtances in his own letters which rendered this perfectly incredible—But, *laſtly*, There were Brodie's own letters, which, in his mind, amounted to a full confeſſion of the crime: In one of them he had ſaid, he had no direct acceſſion in Brown, Smith, and Ainſlie's depredations, except the laſt *fatal one*. This had been clearly ſtated by the Lord Advocate; and the force of what he had ſaid no ways removed, even by the ingenuity of the Dean of Faculty. Where then was there a poſſibility of doubt with reſpect to the criminality of Brodie? He had no doubt in his own mind, nor could he imagine there would be any with the Jury.

There was indeed an attempt to prove an *alibi*. But the import of that evidence had been ſo fully ſtated already, he would not dwell upon it. He left the credibility of the witneſſes, and the diſcrepancy of their teſtimonies, to the Jury. In ſhort, he concluded, with deſiring the Jury to return ſuch a verdict as their own good ſenſe and conſciences ſhould dictate.

The *Lord Juſtice Clerk* having finiſhed his addreſs to the Jury, he ſaid, that he hoped it would not be inconvenient for them to return their verdict at twelve o'clock that day; but, upon the ſuggeſtion of one of the Jurymen, it was fixed to be at one o'clock. The Court then pronounced an interlocutor, appointing the Jury inſtantly to incloſe in that place, and to return their verdict at one o'clock; and appointed the priſoners to be carried back to priſon; continued the diet of Court againſt them till that time; and required all perſons having intereſt then to attend under the pains of law.

The Court being thus adjourned, the Jury were incloſed, and remained together about half an hour, when the doors were opened.

The

The Court being again met at one o'clock, and the priſoners brought to the bar, the Clerk of Court called over the liſt of the Jury; and being all preſent, the Lord Juſtice Clerk aſked them who was their Chancellor; upon which the Chancellor roſe, and delivered the verdict to his Lordſhip ſealed.

The verdict being opened and read by the Judges ſeverally, they appointed it to be recorded. During this pauſe, a deep ſilence prevailed.

The verdict being recorded, the Lord Juſtice Clerk called upon the Priſoners to attend to it; and it was then read aloud by the Clerk of Court as follows:

" *At Edinburgh, the 28th day of Auguſt* 1788 *years.*

" The above Aſſize having incloſed, made choice of the ſaid " John Hutton to be their chancellor, and of the ſaid John Hay to " be their clerk, and having conſidered the criminal Indictment " raiſed and purſued at the inſtance of Ilay Campbell, Eſq; his Ma- " jeſty's Advocate, for his Majeſty's intereſt, againſt William Brodie " ſome time wright and cabinetmaker in Edinburgh, and George " Smith ſome time grocer there, pannels, with the interlocutor on " the relevancy thereof pronounced by the Lord Juſtice Clerk and " Lords Commiſſioners of Juſticiary, together with the depoſi- " tions of the witneſſes adduced by the Proſecutor for proving the " ſame, and the ſeveral declarations libelled on, as alſo the depoſi-

" tions of the witneſſes adduced for the priſoner William Brodie, in " exculpation,—They all, in one voice, find the ſaid William Bro- " die and George Smith GUILTY of the crime libelled. In wit- " neſs whereof, their ſaid Chancellor and Clerk have ſubſcribed " theſe preſents in their name, and by their appointment, place and " date foreſaid.

(Signed) " *John Hutton*, Chan.
" *John Hay*, Clerk."

The above verdict being read, the Lord Advocate roſe, and craved the judgment of the Court upon it.

The Counſel for the pannels then pled an arreſt of judgment upon the following grounds. 1*mo*, That, from evidence taken in the courſe of the trial, it appeared, that the libel was inſufficient, in ſo far as it charged " That the pannels did wickedly and felonioufly " break into *the* houſe in which the General Exciſe Office for Scot- " land was kept;" whereas, it ought to have ſtated, That they ſo broke into *one* of the houſes ſo kept, deſcribing ſuch houſe particularly, in reſpect that it appeared from the proof that there were two ſeparate and diſtinct houſes in which the General Exciſe Office for Scotland was then kept, on the oppoſite ſides of the court, and at a conſiderable diſtance from each other. 2*do*, Suppoſing this uncertainty in the libel as to the *locus delicte* was inſufficient to operate an arreſt of judgment, no judgment could paſs upon the verdict of the Jury, on account of the uncertainty thereof, inaſmuch as it found in general terms the pannels guilty of the crimes libelled, which inferred that they had been guilty of breaking into *the* houſe in which the General Exciſe Office for Scotland was then kept, without diſtinguiſhing to which of the *two* before mentioned houſes the verdict applied. And the preſent plea in arreſt of judgment, on that account, deſerved the greater conſideration, that the Jury were called

called upon by the manner in which the proof was conducted on the part of the pannels to attend particularly to the circumſtance of the Exciſe Office being kept in *two* ſeparate and diſtinct houſes, as above ſtated.

Anſwered, in the firſt place, That the plea now offered was not receivable in point of form, as it reſolved into an objection to the relevancy or form of the indictment, which ought to have been ſtated *in limine*. The fact, however, was, that the indictment was ſuſtained as relevant, and admitted to the knowledge of an aſſize in common form; and the Jury having returned a verdict finding the pannels guilty of the crime there charged, there could be no room for any further proceedings, except to pronounce the ſentence of the law upon the verdict ſo returned; the facts which were the ſubject of proof were not then before the Court; and, regularly, the Court had no acceſs to know, or to inquire, whether the Exciſe conſiſted of *one* or *more* houſes. 2*dly*, Even if the matter were open, the objection was frivolous, the fact being, that the houſe which was broke into, as ſtated in the indictment, was really and truly the houſe known by the name of the General Exciſe Office for Scotland at the time, although one or two of the clerks, or inferior officers, were accommodated in a ſmall houſe within a few feet or yards of the large one, and which was joined to it as a wing; the principal houſe, which was broke into, being hired at L. 300 per annum of rent, and the ſmall houſe at L. 8 per annum.

The Court, after reaſoning, pronounced the following interlocutor: "The Lord Juſtice Clerk, and Lords Commiſſioners of Juſti-
"ciary, having conſidered the foregoing debate, they repel the plea
"offered in arreſt of judgment."

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The Court then proceeded to pronounce ſentence upon the verdict, decerning and adjudging the pannels to be carried from the bar back to the tolbooth of Edinburgh, therein to remain till Wedneſday the firſt day of October next; and, on that day, betwixt the hours of two and four o'clock afternoon, to be taken from the ſaid tolbooth, to the common place of execution appointed by the Magiſtrates of Edinburgh, and there to be hanged by the neck, by the hands of the common executioner, upon a gibbet, until they be dead; and ordained all their moveable goods and gear to be eſcheat and inbrought, for his Majeſty's uſe, which was pronounced for DOOM!

The priſoners were then removed from the Court to priſon; and, during the whole courſe of this intereſting trial, an immenſe croud of ſpectators attended, which, at different times, incommoded and interrupted the proceedings of the Court. At pronouncing the ſentence, Mr Brodie diſcovered ſome inclination to addreſs himſelf to the Court, but was reſtrained by his Counſel.

APPEN-

APPENDIX.

No. I.

Mr Groves was deſpatched from London to Amſterdam, to take charge of Brodie. We have been favoured with a copy of his Journal, which, as it is curious, and Brodie the firſt priſoner we remember of having been brought from the Stadthouſe to Britain, we lay it before the public.

MR GROVES'S JOURNAL.

On Tueſday, the 1ſt July, I left London, and arrived at Harwich at three o'clock the next morning: Wedneſday, waited on Mr Coxe, the agent for the packet, with Mr Fraſer's letter, and alſo on the Captain, who dined with me: At half paſt four in the afternoon ſailed out of the harbour, and loſt ſight of the land at nine: Thurſday, got ſight of Helvoetſluys at 12 next day,—a dead calm four leagues from ſhore,—rowed into the harbour in the long boat, with Captain Hearne, and Carpmeal, (Sir S. Wright's officer) with the mail, and a woman going as Lady's maid to Sir James Harris's Lady,—drove back by tide, and almoſt out to ſea again,—landed on ſand,—walked to ſeveral farm-houſes, leaving the mail and baggage on the ſand, guarded, in queſt of a waggon,—refuſed;—a boor, at laſt, went at an extravagant price;—we had walked ſe-

ven miles on hot ſands, and parched with thirſt;—at eight o'clock waggon came with the mail, &c.—ſet out for the Brill, but, within two miles, waggon broke down, and obliged to procure boors to carry mail, &c.—arrived at the Brill at half paſt nine,—Brooks the meſſenger came from Helvoetſluys to meet us, where he had been waiting,—had heard nothing of any perſon (Engliſhmen) being in cuſtody at Amſterdam, which much alarmed me,—nor had Hutchinſon, the collector of the paſſports,—more alarmed;—delivered Mr Fraſer's letter to Brooks;—at ten ſet off with Brooks for Maſlinſluys,—arrived there at half paſt eleven,—got to Delft at three-quarters paſt twelve;—arrived at the Hague at three in the morning in an open poſt waggon, with heavy rain, thunder, and lightning.—— Friday, waited on Sir James Harris at ten in the morning,—introduced by Brooks,—treated with great affability, and received a letter from Sir James, which he had already wrote, directed to Mr Rich, the conſul, Sir James having firſt informed me that Brodie was ſafe in the Stadthouſe,—conſulted Sir James on the mode of obtaining him—informed that, if the magiſtrates of Amſterdam required an official application to the States General, to come back immediately to him, and he would obviate all difficulties; but he did not think it would be neceſſary,—it was Sir James's opinion the magiſtrates would give him up without, if not, was certain they *would detain him* till an anſwer to Sir James's application to the States would be obtained;—ſet off for Amſterdam, and arrived there the ſame evening;—waited on Mr Rich,—politely received; and we conſulted on meaſures,—Mr Rich to wait on one of the magiſtrates that evening, and to ſend to me early next morning.—Waited on Mr Duncan, a Scots gentleman, and father-in-law to Mr Gerard, a miniſter at Amſterdam, with Mr Langlands' letter;—Mr Duncan ſeemed willing to identify Brodie; but, on being called out into another room by Mr Gerard and his wife, on his return, Mr D. ſaid, as far as his word of honour as a gentleman would go, and his belief, he would

ſay

ſay he was the man; but, if an *oath* was required, he would not,—ſaw then a manifeſt reluctance in Mr D. and had no doubt his daughter and the parſon would endeavour to perſuade him to decline troubling himſelf in the matter, but judged he could not go back from what he had ſaid to Mr Rich.

N. B. No miſchief but a woman *or* a prieſt in it,—here both.

Saturday morning, received a meſſage from Mr Rich—moſt of the magiſtrates gone to their country-houſes—nothing could be done till Monday;—Mr Rich entertained no doubt, but ſaid a magiſtrate had informed him, that a formal requiſition muſt be made by him in writing to the magiſtrates,—he produced the copy of one, requiring the perſon of *William Brodie* to be delivered up; I corrected it, by inſerting otherwiſe *John Dixon*, as the magiſtrates of Amſterdam knew of no *William Brodie*; Mr Rich agreed it was proper;—informed him of my ſuſpicions reſpecting Mr Duncan, and the ſteps that would be taken by his family, to make him, if poſſible, recant,—my fears further increaſed, as Mr Duncan, lodged in the ſame tavern with me, I had frequent opportunities of converſation with him, and could plainly ſee a ſorrow for what he had ſaid, and a wiſh to retract.——Monday, waited on Mr Rich,—found, by a miſtake in not inſerting *otherwiſe John Dixon* in the requiſition, that the buſineſs muſt be delayed till the next day ten o'clock, when a general meeting of the magiſtrates, with the grand ſchout, (high ſheriff), to conſider on the application;—miſtake corrected, and requiſition preſented.——Tueſday, ſent for by the magiſtrates to the Stadthouſe;—from their manner, judged Brodie's delivery as *predetermined*;—Mr Duncan ſent for.

Mr

Mr DUNCAN's *account to the magiſtrates.*

That he was not a native of Edinburgh, but of Aberdeen; that he frequently came to Edinburgh on buſineſs; and that, eight, ten, or twelve years ago, he could not ſay which, the man who now called himſelf *John Dixon* was pointed out to him as Deacon Brodie, having aſked a gentleman who he was; that he had ſeen him ſeveral times after, and always underſtood him to be Deacon Brodie, but did not know his Chriſtian name; had no doubt, and verily believed he was the ſame man; but would not ſwear he had no doubt, and verily believed him to be the ſame.

BRODIE ordered to be brought in.

Subſtance of Examination.

Q. What is your name?

A. John Dixon.

Q. That is the name you go by here—but is not your real name William Brodie?

A. My Lords, I ſtand here, and claim the protection of the laws of this country, which require two witneſſes, on oath, to prove me William Brodie.

You ſhall have the protection of the laws of this country, but they do not require two oaths to identify you; it requires that the Magiſtrates ſhall be *ſatisfied* you are the ſame man.

Mr

Mr *Groves.* I beg leave he may be aſked, If he is not a native of Edinburgh?

Queſtion put—the anſwer, I have been at Edinburgh.

Mr *Groves.* Is he a Deacon of Edinburgh?

A. I claim the protection of the laws.

Mr *Groves.* Does he know Mr William Walker, attorney at law, of the Adelphi, London?

A. I know ſuch a man.

Mr *Groves.* Then that William Walker procured the eſcape of this William Brodie from London, which I can prove by extracts of letters now in my pocket, the originals of which are here in the hands of your officers. I can ſwear to Mr Walker's writing.

Priſoner ordered to withdraw.

Here the Magiſtrates aſked me, if I was ready to ſwear that, from the pointed deſcription of him, and all ſaid circumſtances, he was, to the beſt of my belief, the man required to be given up?—I told them I was.

Mr Duncan was then aſked, If, from what he knew, and what he had heard, he would ſwear he had no doubt, and believed him to be the man.

Mr Duncan's reply. I am only a viſitor here, and being called on ſuch an occaſion, it might, in my own country where I am a

Magiſtrate, have the appearance of forwardneſs, if I was to ſwear. I am a man of honour, and a gentleman, and my word ought to be taken. I do believe, and I have no doubt, but he is the ſame man; but I decline to ſwear it: I'll take no oath.

The Magiſtrates expoſtulated, but unſucceſsfully, on the abſurd idea of ſaying, *I have no manner of doubt, and verily believe*, and refuſing to ſwear; *I have no manner of doubt!* &c.

As I had previouſly drawn up an information for Mr Duncan and myſelf to that effect, he was aſked, If he would ſign it without ſwearing? when Mr Duncan ſaid he would.

The Magiſtrates then ſaid, that they ſhould pay the ſame compliment to me they did to Mr Duncan, and take my ſignature to the certificate, without an oath, even to my belief. Certificates ſigned.

The priſoner was then ordered in, and the certificates read to him, and aſked, If he had not a father? he replied, None: But you had a father, ſaid the Judge—was not his name Brodie? To this Mr Brodie replied, "There are more Brodies than one."

Then by that, ſaid the Judge, you confeſs your name is Brodie?

A. Lapſae linguae, my Lord.

Brodie again inſiſted upon the oaths, but the Judge told him that all they wanted was to be *ſatisfied*, which they were from what Mr Duncan and Mr Groves had ſigned, and partly from a confeſſion of his own.

He

He was told he would ſet off as that day; and it was ſettled at four in the afternoon.

The Judge told me I ſhould have a *guide*, who would procure the means of conveyance, &c. I took my leave of them with thanks, &c.; waited on Mr Rich; at four was ſent for to the Stadthouſe, where was a prodigious croud; two carriages and *four* guides, with four horſes in each carriage; and the priſoner, being properly ſecured, we put him into one, and got to Helvoet without much interruption next day at one o'clock; packet ſailed at five.

N. B. I had wrote a letter to Sir James Harris on the Saturday, requeſting the packet to be detained, who informed me by Mr Rich, with whom I dined on the Monday, that it ſhould be detained to the laſt moment.

Brodie was watched two hours alternately on board by the ſhip's crew; his hands and arms confined, and his meat cut for him, &c. On Thurſday night, eleven o'clock, we arrived at Harwich—ſupped—ſet off immediately, and arrived next day at noon at Sir Samſon Wright's, before whom, and Mr Langlands, Brodie confeſſed he was the perſon advertiſed.

No. II.

The following is an account of the proceſs, at Hamilton the chimney-ſweeper's inſtance, mentioned in the trial reſpecting the loaded dice,

dice, where the Club, ſo often mentioned in Smith's declarations, makes a conſpicuous figure.

The proceſs is in the form of a petition and complaint, againſt Brodie, Smith, and Ainſlie. It ſtates, that, on a certain night in January laſt, he, Hamilton, accidentally met with theſe perſons in the houſe of Clark vintner, at the head of the Fleſhmarket cloſe: That when he joined them there playing at dice, that, ſuſpecting no fraud or deceit, he had joined in the amuſement, and, in a ſhort ſpace, loſt ſix guineas, and ſome odd ſhillings: That, being ſurpriſed how this could happen, he ſeized on the dice, and had them examined and diſcovered: *That they were loaded, or falſe dice filled at one end or corner with lead:* And he concludes with praying for a warrant to apprehend and incarcerate the ſaid perſons, until they ſhould repeat the ſum of which he had been ſo defrauded, and pay a ſum over and above, in name of damages and expences.

Anſwers were given in for Mr Brodie to this complaint, and ſeparate anſwers for Smith and Ainſlie.

They ſtated, in general, that, on the evening mentioned in the petition, they were innocently amuſing themſelves with a game at dice over a glaſs of punch, and that the petitioner intruded himſelf upon their company: That if falſe dice were uſed on that occaſion, it was unknown to the defenders, as the dice they played with belonged to the houſe: That, if the petitioner had loſt the ſum he alledged it had not been gained by the defenders, as Smith and Ainſlie had ſaid, that, ſo far from gaining any thing that evening, they had loſt, and Brodie ſaid he had only gained 7 s. 6 d.: That the petitioner himſelf was a noted adept in the ſcience of gambling; and it was not very credible that he would have allowed himſelf to be impoſed upon in the manner he had alledged.

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The *replies* for Hamilton to theſe *anſwers* are a curious production. After ſtating the nature of the complaint, and the defences that had been made to it for Brodie, Smith, and Ainſlie, they ſay, " A wonderful ſtory indeed ! Smith and Ainſlie, two noted ſharpers at the buſineſs, in their anſwers, aſſert they were loſers, and innocent Mr Brodie avers he was only a gainer in this paltry trifle of 7s. 6d. and yet the petitioner finds himſelf out of pocket near as many guineas as that gentleman ſays he received of ſhillings. Certain, however, it is, that it could not ſink ! Certain alſo it is, that in their company, by undue means, he loſt five guinea notes, two half guineas in gold, and ſix ſhillings in ſilver, before he ſuſpected the fraud."

" Neither Dr Katterfelto, nor Breſlaw, were preſent to tranſmute it. Unleſs, therefore, ſome of their learned pupils had not been very near him, he would have been in poſſeſſion of his money at this moment. Mr Brodie knows nothing about, and *is entirely ignorant of ſuch devices, and always conſidered all dices to be alike.* It is, ſays he in his anſwers, it is the petitioner who ' is ſuch an adept ' in the ſcience, as to be alone capable of uſing ſuch inſtruments, ' and of explaining the nature of them.'—Miſerable ! that the petitioner, a deemed ſharper, ſhould be taken in by a pigeon, to uſe the *lingua* of the Club. But ſo it has happened. Mr Brodie knows nothing of ſuch vile tricks—not he ! He never made them his ſtudy —not he ! Never was at either pains or expences to acquire them, nor ever ſtudied under Mr Breſlaw, &c. &c. for that very ſpecial purpoſe—not he indeed ! Mr Brodie never haunted night-houſes, where nothing but the blackeſt and vileſt arts were practiſed to catch a pigeon ; nor ever was acceſſary either by himſelf or others in his combination, to behold the poor young creature plucked alive, and not one feather left upon its wings—not he indeed ! He never was acceſſory to ſee or be concerned in fleecing the ignorant, the

thoughtleſs, the young, and the unwary, nor even made it his ſtudy, his *anxious ſtudy*, with unwearied concern, at midnight hours, to haunt the rooms, where he thought of meeting with the company, from which there was a poſſibility of fetching from a ſcurvy ſixpence to a hundred guineas—not he indeed! He is unacquainted altogether, either with packing or ſhuffling a ſet of cards—he is indeed! Mr Brodie, in all his innocent amuſements, never met with any perſon, who, after having been fleeced of money, to the amount of a hundred pounds, and detected of the vile and diſhoneſt methods by which it had been abſtracted from him, received, as a return for his moral rectitude, a very handſome inciſion on the eye—never he indeed! He never was in ſuch company, nor ever met with ſuch accident—not he! It is only the petitioner, or ſuch like him, who are known and adepts in the devices, which Mr Brodie very modeſtly ſays *he is innocent of*, who could be guilty of ſuch practices, and receive ſuch returns.

" But, however certain Mr Brodie's innocence may be *on theſe ſcores*, previous to the 17th January current, it is as certain, that on that night, both him, and Ainſlie, and Smith, had acquired *more compleat knowledge* of the buſineſs of gambling than the petitioner; for, notwithſtanding all his art, they went infinitely beyond him; he was totally at a loſs when he obſerved the dice take ſuch a run; not indeed but he was apprehenſive ſomething was going on unfair and ungenerous: At laſt, after having been deſpoiled of his money, he ſeized them, and diſcovered the charm. For this unjuſtifiable procedure in the defender, the petitioner is confident every good magiſtrate will feel it their duty to give him reparation; and it is their buſineſs to check theſe infamous proceedings, be they followed by whatſoever perſon they may; for, the *greater* the man is, and the *weightier* his purſe, the more is *he* the *object* of juſtice and example;

and

and the *lower* the man is, in rank or ſtation, *who* ſuffers by ſuch, the *louder* is the cry, and *more* the demand for redreſs."

" If, ſo long ago as the 1711, the legiſlature had perceived its pernicious conſequences, how much more is it the duty of thoſe to whom its execution is entruſted, to act up to its very letter; when it is a fact, that, in theſe modern times, gaming of every kind has pervaded all ranks; from the ſtable-boy to the Peer it is the ſubject of ſtudy and of practice; and ſome of every denomination have made it their chief buſineſs to attain the method or art how to cheat his neighbour the beſt, his neighbour, nay, his friend and companion, who never would have ſuſpected ſuch a latent ſerpent lay in his breaſt. There are living inſtances of men, who, though born to independence, and enjoying moſt ample fortune, can intermix with the very loweſt claſs of the multitude, and even court their company, from motives prompted ſurely by the principles only of rapacity and avarice; and, without ſhame or remorſe, uſe the moſt unjuſtifiable and diſhoneſt practices to fleece them of their little pittance, pittances ſo much below their envy, that a relation of them would not bear the appearance of truth; and what muſt theſe men appear to be in the mind of every good perſon; yet ſtill there are ſuch who demean themſelves to theſe practices, and, rather than aſſociate with their equals, will deſcend to keep company with oſtlers, pedlars, and ſtable-boys."

No. III.

[A Copy of the following Narrative, we acknowledge, was offered while the printing of this Trial was going on at preſs.

It was refuſed from motives of delicacy, and as not connected with the Trial; but having been ſince printed ſeparately, and many hundred copies circulated, and long extracts of it ſent to the newſpapers for inſertion, there can be no cauſe now for withholding it from the Public; and, in order to gratify their curioſity, we have annexed it as a curious detail of facts reſpecting the perſons ſo often mentioned in the foregoing Trial.]

NARRATIVE OF THE FACTS

RESPECTING THE BREAKING INTO

The Shop at the Head of Bridge-Street,

BELONGING TO

JOHN AND ANDREW BRUCE, MERCHANTS
IN EDINBURGH,

On the Night betwixt the 24th and 25th December 1786.

THE trial of William Brodie and George Smith being at preſent in the preſs for publication, Meſſ. Bruces furniſhed the publiſhers with the following facts, in order that they might publiſh the ſame along with the trial. Theſe gentlemen, however, having declined to do ſo, as not being any part of the trial, Meſſ. Bruces now take this opportunity of laying before the Public the whole facts that have come out relative to the breaking of their ſhop; which, they have too much reaſon

reaſon to believe, was meant to be concealed altogether. But, in juſtice to themſelves, they wiſh to lay the whole candidly before the Public; and ſhall only add further, that there is not one word in the following narrative but what is conſiſtent with truth.

IN the courſe of the precognitions taken by the Sheriff reſpecting the crimes committed by Brodie, Smith, Brown and Ainſlie, Meſſ. John and Andrew Bruce, merchants in Edinburgh, applied to the Procurator Fiſcal to know if any facts had come out reſpecting the breaking of their ſhop at the head of Bridge-ſtreet; and always received for anſwer, that, whenever any thing occurred about breaking their ſhop, they would be informed of it. The Procurator Fiſcal, however, never gave the Meſſ. Bruces any information on that head, though the very warrant on which Smith and Ainſlie were incarcerated in March laſt, bore, that it was on ſuſpicion of breaking their ſhop.

When Smith and Brodie received their indictment on the 19th of July laſt, it then appeared that no crime was ſpecified in the indictment but the breaking into the Exciſe Office. Meſſ. Bruces then applied to the Procurator Fiſcal, to know if any thing had come out or was taken down in the precognition reſpecting the breaking of their ſhop; when he told them, that nothing had been taken down thereanent, though Meſſ. Bruces were informed by Smith, that he had, when examined before the Sheriff, declared every fact concerning it.—Meſſ. Bruces were at a loſs to account for this extraordinary neglect of not taking down into the precognition all the facts that Smith had declared relative to their ſhop. They were in juſtice entitled to this, ſo as at leaſt to have been ſatisfied in knowing who had done them the injury; and it might have led to a complete proof of the fact, ſo as to entitle them to reſtitution of the value ſtolen from them, from the funds of thoſe who had been guilty of the crime. They ſignified to the Procurator Fiſcal that they wiſhed ſtill to have an examination of all con-

cerned. But this he declined, by ſaying it was impoſſible to do it now—that they were indicted.

Meſſ. Bruce therefore drew up a memorial, and laid it before his Majeſty's Advocate, to ſee if it was poſſible to get an examination reſpecting the breaking of their ſhop; when his Lordſhip was pleaſed to ſignify, that it could ſtill be done, and deſired an application might be made to the Sheriff for that purpoſe; which was done accordingly by a petition of the following tenor:

Unto the Right Hon. the Sheriff-depute of the County of Edinburgh, or his Subſtitute,

The PETITION of JOHN and ANDREW BRUCE, Merchants in Edinburgh,

Humbly Sheweth,

THAT, on the night betwixt the 24th and 25th days of December 1786, the petitioners ſhop, at the head of Bridge-ſtreet, was broke into, and ſeveral gold watches, ſeals, rings, and other articles, were carried off, to the value of about L. 350 Sterling. The petitioners applied to the Procurator Fiſcal upon this occaſion, who aſſured them, that every ſtep ſhould be taken to endeavour to find out the perſons who had robbed them of their property.

No intelligence, however, could be got reſpecting this buſineſs till the beginning of March laſt, when Brown gave information of him and his aſſociates, Smith, Ainſlie, and Brodie, being the perſons who had committed ſo many offences of that kind; and, accordingly, the Procurator Fiſcal preſented a petition to your Lordſhip, ſtating the fact, *of the petitioners* ſhop being broke, and referring to a liſt of articles ſto-

len

ſen therefrom; and that there was reaſon to believe that Smith and Ainſlie were the perſons guilty of that crime, upon which they were apprehended, and incarcerated in the tolbooth of Edinburgh, where they have remained ever ſince; and Smith and Brodie are now indicted to be tried for certain crimes, other than that of breaking the petitioners ſhop.

When the petitioners learned that no notice of their ſhop was taken in the indictments, they applied to the Procurator Fiſcal to know what facts had come out in the precognition, regarding the breaking of their ſhop, when he informed them, that not a word reſpecting their ſhop had been taken down in the precognition, though he admitted, when Smith was examined before your Lordſhip, he had acknowledged the fact, that he was the perſon who had broke the petitioners ſhop, with the knowledge, and by the advice of Brodie: That Brodie had actually got part of the articles ſtolen therefrom, particularly ſome gold ſeals, and a gold watch-key, and ſome rings.

In theſe circumſtances, the petitioners were at a loſs to know how to conduct themſelves, in order ſtill to get an examination of Smith, Brodie, and their aſſociates, as there might be ſome difficulty in the matter, now that Smith and Brodie are indicted. However, as they are indicted for other crimes, the petitioners took the liberty of ſtating the matter in a memorial to his Majeſty's Advocate, who is of opinion, that Smith, Brodie, and all others concerned, or ſuſpected, might ſtill be examined, with regard to the breaking into the petitioners ſhop; and deſired that the preſent application might be made to your Lordſhip for that purpoſe.

The petitioners are informed, that Smith, though indicted, is ſtill willing to declare every fact and circumſtance reſpecting this matter; they are alſo informed, that Brodie's watch, with ſome ſeals, are in the hands of Sir Sampſon Wright, at London, and to be tranſmitted here:

here: They therefore humbly truſt, that proper orders will be given to preſerve theſe articles entire; and that inſpection of them will be given to the petitioners, that it may be known whether they are any of the articles ſtolen from their ſhop.

May it therefore pleaſe your Lordſhip, to take the declarations of the ſaid Smith, Brodie, Ainſlie, and Brown, and any other perſons that may be thought neceſſary, and condeſcended on by the petitioners, and to give information to the petitioners when ſuch examinations are to take place, that they, or their counſel, may attend, to put all pertinent queſtions to ſuch as ſhall be examined reſpecting the breaking into the petitioners ſhop; and to give inſpection of Mr Brodie's watch, ſeals, and other trinkets that may be along therewith, to the petitioners, ſo ſoon as they arrive.

According to juſtice, &c.

(Signed) JOHN AND ANDREW BRUCE.

July 25. 1788.

The deſire of the petition was granted by the Sheriff on the 26th of July; and, on the 28th of that month, the Sheriff-ſubſtitute, with the Procurator Fiſcal and Mr Bruce, went to the priſon to Smith, and the Sheriff-ſubſtitute informed him, he was come to take down his declaration reſpecting Meſſ. Bruces ſhop-breaking, but not with regard to any thing contained in his indictment, and therefore hoped he would tell the truth. To which Smith anſwered, he had no objection to tell the whole truth; he thought it a piece of juſtice to do ſo; that he had formerly declared all he knew concerning that matter before the Sheriff, but he believed it was not taken down *.

* See the concluſion of Joſeph Mack's evidence, page 17.

Smith

Smith was then examined, who declared, in ſubſtance, as follows:

That, in the month of November 1786, the declarant and Brodie had laid a plan to break into a hardware ſhop on Bridge-ſtreet belonging to Davidſon M'Kain: That they accordingly went there one night with a parcel of falſe keys and ſmall crow iron, and opened the door, by unlocking the padlock and lock thereof with the falſe keys; after which they went and hid the falſe keys and crow iron, in caſe any of theſe articles ſhould be found upon them, and then returned to the ſhop: That Smith was to go into the ſhop, and Brodie to watch at the outſide of the door: That the declarant carried with him a dark lanthorn, which he lighted: That their intention was only to look at the goods, but not to carry them off that night: That the declarant remained in the ſhop for about half an hour; and, after being ſome time there, Brodie called out, What made him ſtay ſo long, was he taking an inventory of the ſhop: That the declarant only brought away with him that night ſeventeen ſteel watch chains, and a ſmall red pocket-book. The ſteel chains the declarant afterwards ſold along with ſome other goods of his own to an auctioneer, and the pocket-book he afterwards made a preſent of to Michael Henderſon, ſtabler in Graſs-market, his daughter: That the declarant and Brodie afterwards, in about a fortnight, went back to rob M'Kain's ſhop completely, and opened the door, as formerly, when Smith went in, and left Brodie to watch without; but he was not a few minutes in the ſhop, when he heard a perſon in the room immediately below riſe out of his bed, and come towards the door; on which the declarant pulled up the ſhop-door, and run ſtraight into the ſtreet, without carrying any thing with him: That he found Brodie had fled; and the declarant, on going up to the main ſtreet, found Brodie ſtanding at the head of the entry into the Old Green Market: That, a little after this, the declarant and Brodie walked arm in arm down Bridge-ſtreet, in order to ſee what they could obſerve about the ſhop; and, in paſ-

ſing down the ſtreet, they ſaw a man looking out at the door immediately under M'Kain's ſhop, and a guard ſoldier ſtanding oppoſite, at the head of the ſtair which goes down to the Fleſh Market; ſo that the declarant and Brodie paſſed on along the Bridge, and afterwards went to their ſeveral homes, as nothing could be done further that night: That Brodie told the declarant, that the ſhop at the head of Bridge-ſtreet, belonging to Meſſ. Bruces, would be a very proper ſhop for breaking into, as it contained valuable goods, and he knew the lock would be eaſily opened, as it was a plain lock, *his men having lately altered that ſhop-door*, at the lowering of the ſtreets: That the plan of breaking into this ſhop was accordingly concerted betwixt them, and they agreed to meet on the evening of the 24th of December 1786, being a Saturday, at the houſe of James Clark vintner, in the head of the Fleſh Market Cloſe, where they generally met with other company to gamble: That, having met there, they played at the game of hazard, till the declarant loſt all his money; but at this time Brodie was in luck, and gaining money: That the declarant often aſked Brodie to go with him on their own buſineſs; but Brodie, as he was gaining money, declined going, and deſired the declarant to ſtay a little, and he would go with him;—the declarant however turned impatient, as it was near four in the morning, and the time for doing their buſineſs was going; he therefore left the room, and went by himſelf to Meſſ. Bruces ſhop, when he opened the door with falſe keys, and, after getting in, lighted a dark lanthorn, and took out of the ſhow-boxes or glaſſes on the counter, and from the inſide of the windows, ten watches, five of them gold, three ſilver, and two metal, with the whole rings, lockets, and other jewellery and gold trinkets in the ſhow-boxes, all which he put into two old black ſtockings, and carried them to the ſtable of Michael Henderſon in the Graſs-market, where he hid them under ſome rubbiſh below the manger, and afterwards went home to his own room in the Graſs-market: That he ſtaid there till near eight in the morning, and then went up to Mr Brodie's houſe, when the maid told him, that Mr Brodie was

in

in bed, and the declarant then left his name, and ſaid he wanted to ſee him, and thereafter returned home to his own room: That, after ſtaying there ſome time, Mr Brodie came and called for him, when the declarant told him what he had done, and deſired Mr Brodie to ſtay there till he would go for the goods: That the declarant accordingly went to the ſtable, and brought the two black ſtockings, containing the goods, and poured them out upon a bed in a cloſet off his room, and then ſaid to Mr Brodie, You ſee what luck I have been in; you might have been there; but as you did not go, you cannot expect a full ſhare; but there are the goods, pick out what you chuſe for yourſelf; upon which Brodie took a gold ſeal, a gold watch-key ſet with garnet ſtones, and two gold rings: That the declarant and Brodie went twice over the goods, in order to aſcertain their value; and the declarant, who was himſelf ſkilled in articles in that line, was of opinion they would have coſt Meſſ. Bruces about L.350 Sterling: That, after this, the goods were again put into the black ſtockings, and carried back to Michael Henderſon's ſtable: And in the courſe of that day, being Sunday, the declarant and Brodie frequently paſſed Meſſ. Bruce's ſhop-door, to ſee in what ſituation the door ſtood, and to learn if the robbery had been diſcovered; and nothing appearing, the declarant propoſed to Brodie to go back that night, in order to ſweep the ſhop clean; but Brodie objected to this, ſaying that a diſcovery might have been made, and a watch ſet to entrap them; on which account they deſiſted from the attempt: That, after this, Brodie and the declarant had ſeveral meetings, conſulting about the ſafeſt way to diſpoſe of the goods; and upon the Tueſday evening it was concerted between them, that the declarant ſhould go off next day for England with the goods; and at that time Brodie gave the declarant five guineas and a half to carry his expences on the road; and, to evade ſuſpicion, the declarant ſet out early next morning, and travelled on foot as far as Dunbar, where he took the mail coach and went to Cheſterfield in England, and there ſold the whole goods taken out of Meſſ. Bruce's ſhop, except what Mr Brodie got, for L.105 Sterling, to John

Taſkar

Taſkar *alias* Murray, who, he knew, had been baniſhed from Scotland: That the declarant ſent a twenty-pound note of this money in a letter to Mr Brodie, informing him of the ſale, and deſiring him to pay himſelf what the declarant had borrowed, and ſupply his wife with money till the declarant's return: That the declarant ſtaid for ſome weeks in England, during which time he had ſeveral letters from Brodie; and, on his return, gave to Brodie three ten-pound notes more of the money, to keep for him, and to prevent ſuſpicion by the declarant's having ſo much money about him, which money Brodie gave him as he wanted it, but gained a great part of it at play: That, among the goods ſold to Taſkar, there was a particular gold watch, which Taſkar ſaid he would wear himſelf, and, to prevent a detection, got the name and number altered by a man at Leeds, and which watch Taſkar was wearing when the declarant left England.

Mr Brodie was examined the ſame day, and being interrogated, declared, That he had been employed by the Magiſtrates of Edinburgh to alter the door of Meſſ. Bruces ſhop, at the head of Bridge-ſtreet; that his men altered it accordingly, after the ſtreets had been lowered. And being interrogated if he was at that time acquainted with George Smith, preſent priſoner in the tolbooth? declares, That he does not at preſent remember at what time he became acquainted with Smith—But as the declarant has other buſineſs of his own at preſent to take up his time, declines to give any further anſwer to this or any other queſtion at preſent. Being further interrogated if he recollects receiving from George Smith a gold ſeal, a gold watch-key, and two gold rings?—he declines to anſwer this or any other queſtion, for the reaſon above ſtated. And being deſired to ſign this declaration, he refuſed ſo to do.

Ann Hibbutt, ſpouſe to George Smith, was alſo examined, who declared, That one morning Brodie came to the room where her huſband and ſhe reſided, and examined a parcel of jewellery goods; and ſhe

ſhe ſaw Mr Brodie get the ſeal, watch-key, and rings mentioned in her huſband's declaration: That ſhe ſaw Brodie give her huſband ſome money the night before he went to England; and, during her huſband's abſence, ſhe received money from Mr Brodie.

Andrew Ainſlie, was examined, and declared as to the time of his becoming acquainted with Brodie and Smith: That he was at Glaſgow at the time Meſſ. Bruces ſhop was broke; but, on his return to Edinburgh, was informed of the particulars by Smith: That he often ſaw in Mr Brodie's poſſeſſion, hanging at his watch, a gold ſeal and watch-key, which Brodie ſaid, theſe, with ſome other trifles, were the only things he had got of what was taken out of Meſſ. Bruces ſhop; and has often heard Smith and Brodie quarrelling, and Brodie grumbling and complaining that he had never got his proper ſhare of the goods taken out of that ſhop.

John Brown, alias Humphry Moore, declared as to the time he became acquainted with Smith and Brodie: The firſt time he ſaw Brodie was ſupping in Smith's houſe: That he was not come to Edinburgh when Meſſ. Bruces ſhop was broke: That he has often heard Smith and Brodie talking with regard to that ſhop-breaking, and Brodie's complaining that he had not got his proper ſhare of the goods; and particularly, in a converſation betwixt Brodie and the declarant, after the ſhop of Inglis and Horner had been broke into, Brodie damned Smith for having broke into this laſt ſhop himſelf, and ſaid he would treat him, Brodie, in the ſame manner he had done as to Bruces ſhop, which was very ungenerous, after he had given him the information: That he had often had Brodie's gold watch in his cuſtody, and ſaw the gold ſeal and watch-key hanging at it, which Brodie often ſaid was the only things he had got that were taken from Bruces ſhop.

MVSEVM
BRITAN
NICVM